118-655

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1200. 792 - 7823

THE CHARLESTOWN FIVE-CENT SAVINGS BANK, APPELLANT,

vs.

PETER BUTLER, RECEIVER OF THE PACIFIC NATIONAL BANK OF BOSTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED NOVEMBER 6, 1885.

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1 UNITED STATES OF AMERICA, *Massachusetts District*, } ss:

At a circuit court of the United States for the first circuit begun and holden at Boston, within and for the district of Massachusetts, on Friday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and eighty-five, before the Honorable Le Baron B. Colt, circuit judge.

CHARLESTOWN FIVE-CENT SAVINGS BANK, Complainant, *v.* LINUS M. PRICE, Receiver, Defendant. } In Equity.

The original bill of complaint in this cause was filed in the clerk's office on the twenty-fifth day of November, A. D. 1884, and was duly entered at the October term of this court, A. D. 1884, when and where the parties appeared, by their respective attorneys. This cause was thence continued to this present term, when, by agreement of parties, the original bill of complaint is withdrawn and a new bill of complaint substituted therefor, which substituted bill of complaint is as follows:

2 *Bill of Complaint.* (*Filed June* 8, 1885.)

The Charlestown Five-Cent Savings Bank, a corporation duly created by and organized and doing business under the laws of the State of Massachusetts, of Boston, in said district, its place of business, brings this its bill of complaint, by Phinehas J. Stone, its president, being thereunto lawfully authorized, against Linus M. Price, a citizen of the State of New Jersey, but now commorant at Boston, in said district, as he is receiver of the Pacific National Bank of said Boston, a national banking association organized under the laws of the United States.

And thereupon your orator complains and says:

That on or about the fourteenth day of March, 1883, the said respondent, in his capacity as receiver of said bank, instituted a suit against your orator by writ issuing out of this honorable court, and returnable to the May term thereof then next, which was duly entered in said court and is still pending therein, by which suit said respondent sought and still seeks to enforce against your orator an alleged personal liability as the alleged holder of two hundred shares of the capital stock of said bank, at the time of its insolvency, failure, or suspension, to the amount of twenty thousand dollars.

2a A copy of the declaration in said suit (marked "A") is hereunto annexed and made part of this bill.

And your orator further says that, prior to the institution of said suit against it by the respondent, and in anticipation of such enforcement by the receiver against it of said alleged liability, as the alleged holder of said shares, your orator had fully satisfied and extinguished such alleged liability, under the circumstances and in the manner hereinafter set forth, viz:

On or about the eighteenth day of November, 1881, said Pacific

National Bank, being unable to meet its debts and liabilities, suspended payment thereof, and thereupon closed its doors to business, being then insolvent, and owing debts to a large amount in excess of all its assets, its capital stock, and the amount of the one hundred per centum for which the stockholders were by law liable upon their several shares therein towards the payment of the debts of said bank; whereupon Daniel Needham was duly appointed examiner of said bank by the Comptroller of the Currency of the United States, and by him placed in possession and charge of said bank, and all the assets, records, and books of said banking association, with the power and duty imposed on him to make a thorough examination into all the affairs of said association, to examine all the officers and agents thereof on oath, to make report of the standing and condition of said bank, and to receive all moneys paid for the benefit of the creditors of said bank, and to retain them and all assets of said bank in his possession until discharged from said trust.

Said bank, with its assets and the moneys aforesaid, remained in the exclusive charge and possession of the said Needham, with its doors closed to business as aforesaid, until long after the eighteenth day of March, 1882, hereinafter mentioned.

And your orator further says that said Comptroller of the Currency, well knowing the facts above set forth concerning the insolvency of said bank, on the sixteenth day of December, 1881, notified the stockholders thereof that the entire capital stock of said bank had been lost, and that they were required to pay one hundred per centum upon the amount of the capital stock of said bank held by each one of them, and informed them that, if they should
3 neglect such payment for three months from the date of said notice, a receiver would be appointed, and the affairs of the bank be closed up in the manner provided in sect. 5234 of the Revised Statutes of the United States, which your orator well knew would involve the necessity of an assessment of one hundred per centum upon the par value of each share of stock held by the stockholders of said bank for the payment of its debts.

And your orator further says that said Charlestown Five-Cent Savings Bank received information that a meeting of certain stockholders of said banking association was held in said Boston on or about the tenth day of January, 1882, at which said Needham was present in his capacity of examiner as aforesaid, and, as representative of the Comptroller of the Currency and agent of the creditors of said bank, urged the stockholders there assembled to voluntarily pay the one hundred per centum upon the par value of their stock which is required by the statute, and represented to them that the bank was insolvent, and the capital stock wholly lost, and that the bank must be put into the hands of a receiver, whereupon the payment of an amount equal to the par value of the stock in said bank held by him would be demanded of each stockholder under the provisions of sect. 5151 of the Revised Statutes of the United States, and its payment enforced by process of law unless said stockholders would voluntarily pay such amount, to be applied to the payment of the debts and liabilities of the bank, and that if the stockholders would voluntarily assess upon

themselves and pay said amount they would thereby be relieved from any further liability under said statutes to an assessment for the payment of the debts of said bank, and that thereupon said stockholders at said meeting resolved voluntarily to assess upon themselves and severally to pay an amount equal to the par value of the several shares of their stock for the purposes aforesaid.

And your orator further says that at the time of said meeting it was alleged, and your orator knew that it was alleged, that it was the owner of two hundred shares of the capital stock of said bank, and that as such owner it was personally liable to the creditors of said bank in the sum of one hundred per centum of the par value of said shares, viz., the sum of $20,000, and it says that, having been informed that said notice of the Comptroller of the Currency
4 ordered an assessment for the payment of debts, and also being informed of the aforesaid statements, representations, and assurances made by said Needham, your orator, on or about the eighteenth day of March, 1882, applied to said Needham for information respecting the proposed voluntary assessment, and was assured by him that, if said Charlestown Five-Cent Savings Bank should voluntarily pay an amount equal to the par value of its alleged stock, it would thereby be relieved from further liability for the debts of the said bank.

And your orator says that, acting upon the facts set forth in said notice that the stock was all lost, and under the influence of the menace therein contained, and relying upon the representations, statements, and assurances of said Needham, made by him as aforesaid, as the agent of the creditors of said bank and the representative of the Comptroller of the Currency, and believing them to be true, and also receiving like assurances from the counsel of the bank, your orator elected to anticipate the enforcement by a receiver of such alleged liability as owner of said shares, and in pursuance of such election and for the purpose of discharging said alleged liability voluntarily paid to the cashier of said bank, by direction of said Needham, an amount equal to one hundred per centum of the par value of said two hundred shares of capital stock, which it is alleged in the respondent's said declaration are owned by it, viz., the sum of $20,000, for the purpose of paying the debts of said bank, which sum was applied in part payment of the debts and in liquidating the liabilities of said association.

And your orator further says that the creditors of said association, among whom said sum was distributed, were the same persons and no others for whose benefit said respondent now seeks by said suit to enforce against your orator its liability therein alleged.

And your orator further says that by the voluntary payment of the $20,000 as aforesaid and the payment of said sum to the creditors of said bank as aforesaid he fully satisfied and discharged, in law and equity, all the liabilities imposed upon it by said sect. 5151 of said statutes, and relieved itself from all the liabilities set forth against it in respondent's said declaration.

And your orator says that since said payment by it made on or

about the eighteenth day of March, 1882, of said sum of $20,000
5 to the cashier of said bank to satisfy its said alleged liability as a holder of two hundred shares of the capital stock of said bank, as hereinbefore set forth, it has not at any time been the owner or holder of any shares of said capital stock which it did not own or hold when it made said payment, and the two hundred alleged shares upon which it made said payment are the same shares as the two hundred alleged shares mentioned in the respondent's said declaration in said action at law.

And your orator further says that at the time of said insolvency, failure, or suspension of said banking association it owned only sixty shares of the capital stock thereof, and that it does not now own, nor has it ever owned, two hundred shares thereof, as alleged in said declaration; that theretofore, viz., in the month of September, A. D. 1881, the directors of said bank voted an increase of the capital stock of said bank from five hundred thousand dollars to one million dollars, and assigned one hundred and forty shares of such increase to your orator, upon which one hundred and forty shares of such supposed increase of stock it paid one hundred per cent. aforesaid, supposing itself liable upon said shares as legal stock of said bank; but it says that in fact no such increase of the capital stock of said bank had been legally made and that the attempted increase and issuance of the same by said directors were without authority of law and wholly void; and it further says that the said one hundred per cent. on the same, being a part of the said $20,000 paid by it, was paid as aforesaid upon said supposed shares for the purpose of paying the debts of said bank, and was so applied, as hereinbefore set forth, and that your orator has already paid upon the stock in fact owned by it in said bank a sum of more than three times the amount of its stock therein at its par value as a contribution by it towards the payment of the debts and engagements of said bank.

And your orator says that in equity and good conscience said payment made by said Charlestown Five-Cent Savings Bank and the application of the said $20,000 to the payment of the debts of said banking association were a satisfaction of its alleged indi-
6 vidual responsibility and liability as a shareholder of said bank for all contracts, debts, and engagements of said association, or that said payment constitutes and should be treated as an equitable set-off to said alleged liability, and that the liability sought to be enforced against your orator in said suit now pending is the same as and no other than that already satisfied, and that the creditors of said bank have received the full benefit of said payment by which your orator anticipated the present attempt by said suit to enforce said liability.

And your orator says that its alleged obligation to said creditors has thereby been equitably performed, and that it would be inequitable, unjust, and a great hardship upon your orator to be held a second time upon said supposed liability.

Notwithstanding all which matters and things said Price, the respondent, ignoring the same, proposes to press and is now pressing said suit against your orator.

To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the said respondent may answer the premises (but not upon oath, which is hereby expressly waived), and that said respondent, plaintiff as aforesaid in said action at law, may be not only perpetually enjoined from further prosecuting said action, but may also be temporarily and specially enjoined from prosecuting the same during the pendency of this bill, and that your orator may have such further and other relief in the premises as the nature and the circumstances of this case may require and as to your honors shall seem meet. may it please your honors to grant unto your orator not only the most gracious writ of injunction issuing out of and under the seal of this honorable court, according to the form of the statute in such case made and provided, to be directed to the said Linus M. Price, commanding him absolutely to desist, and enjoining and restraining him, the said respondent, from proceeding further with said action against your orator, and restraining him from proceeding at law against your orator touching any of the matters in question, and a special order enjoining and restraining him from prosecuting said action at law during the pendency of this bill, but also a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said Price, defendant, commanding him on a day certain, therein to be named,
7 and under a certain penalty, to be and appear in this honorable court, and then and there to answer all and singular the premises (but not under oath), and to stand to, perform, and abide such further order, direction, and decree as may be made against him.

And your orator, as in duty bound, will ever pray.

CHARLESTOWN FIVE-CENT SAVINGS BANK,
By PHINEHAS J. STONE, *President.*

A. P. GOULD,
Of Counsel.

UNITED STATES OF AMERICA, }
Massachusetts District, } *ss:*

BOSTON, *June* 2, 1885.

Personally appears the above-named Phinehas J. Stone, and makes oath that the foregoing bill of complaint is true, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

Before me—

[SEAL.]

SAMUEL S. WILLSON,
Notary Public.

"A." Copy annexed.

Plaintiff's Declaration.

Circuit Court of the United States, District of Massachusetts.

LINUS M. PRICE, Receiver,
v.
CHARLESTOWN FIVE-CENT SAVINGS BANK.

Plaintiff says that the Pacific National Bank of Boston heretofore, and prior to the acts herein mentioned, was duly organized and authorized to do business as a national bank or banking association under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved on the 3d day of June, A. D. 1864, and which said provis-
8 ions are embraced in title sixty-two of the Revised Statutes of the United States, located and having its banking house at Boston, in — State of Massachusetts; that said banking association thereupon proceeded, and for a long time thereafter continued, to issue currency and receive deposits of money, discount negotiable paper, and generally to transact the business of a national banking association, as authorized by the aforesaid act of Congress; that in its said business as aforesaid the said banking association contracted, prior to the 22d day of May, A. D. 1882, large debts and liabilities, and that, to wit, on the 22d day of May, A. D. 1882, the Comptroller of the Currency of the United States was satisfied from a report of proceedings of the board of directors of the Pacific National Bank of Boston, previously made to said comptroller, that said banking association, the Pacific National Bank of Boston aforesaid, was insolvent and unable to pay its debts and liabilities; that the said Comptroller of the Currency, upon being satisfied of the insolvency of said banking association as aforesaid, did, to wit, on the 22d day of May, A. D. 1882, and as authorized and empowered to do by virtue of section one of an act of Congress entitled "An act authorizing the appointment of receivers of national banks and for other purposes," approved on the 30th day of June. A. D. 1876, duly appoint the said Linus M. Price receiver of all the property, books, records, and assets of the said banking association, as is provided by law. And the said Linus M. Price accepted said appointment and duly qualified as such receiver aforesaid, and executed such bond and with such surety as required by the laws of the United States and approved by said comptroller, and which said appointment more fully appears by a copy thereof hereto annexed, marked "Schedule A," or to the original of which, ready to be produced in court, the said plaintiff craves leave to refer; that thereupon the said plaintiff, under the direction of the said comptroller, took possession of the books, records, property, and assets of every description of the Pacific National Bank of Boston aforesaid, and has ever since been, and is now, engaged in collecting and converting the assets thereof and discharging in other respects the lawful duties of his said receivership.

And the plaintiff avers that the property and assets of said banking association are insufficient to pay and satisfy its debts and liabilities contracted as aforesaid; and that, in order to provide for the paying of the same, it became and was and is now necessary to enforce the personal liabilities of the stockholders, as is provided and imposed by said act of Congress.

And the said plaintiff further avers that the said Comptroller of the Currency did ascertain and determine, upon data satisfactory to him, that the assets and credits of said association were insufficient to pay its said debts and liabilities, and that, in order to provide the
9 money necessary to pay said debts and liabilities of said association, it was necessary to enforce the individual liability of the shareholders of said association, as provided by the aforesaid act Congress, and especially by the twelfth section thereof (section 5151, U. S. Rev. Statutes); and that said comptroller, in pursuance of the powers for that purpose vested in him by the aforesaid act of Congress, and to that end did, to wit, on the 27th day of November, A. D. 1882, order and make an assessment upon the said shareholders of said association, including the said defendant in this action, and each and every one of them, equally and ratably, to the amount of one hundred dollars per centum ($100 per cent.) of the par value of the shares of the capital stock in the said association held or owned by them respectively, including the defendant, at the time of its insolvency, failure, or suspension, as aforesaid, which said assessment more fully appears by a copy of the order making the same hereto annexed, marked "Schedule B," or to the original thereof, ready in court to be produced and to which the said plaintiff craves leave to refer.

And the said plaintiff further avers that the said comptroller has decided that it is now necessary to institute a suit or suits against the said shareholders, including the defendant, to enforce their said personal liability, and to that end has ordered and directed the said plaintiff to institute in the proper court or courts such suit or suits as may be necessary to enforce against each and every shareholder of the said association, equally and ratably, his or her personal liability as such shareholder, in manner and to the extent provided by the twelfth section of said act (section 5151 U. S. Rev. Statutes)—that is to say, the rate of one hundred per cent., hereinbefore specified.

And the said plaintiff further avers that the said defendant was, at the time of said insolvency, failure, or suspension of said banking association, a shareholder of its capital stock to the amount of two hundred shares, of the par value of one hundred dollars per share, and of the aggregate value at par of twenty thousand dollars, and held, or was entitled to hold, in its possession or control the usual stock certificates, as such shareholder in said banking association, and that, to wit, on the first day of December, A. D. 1882, the said plaintiff made demand in writing upon the said defendant as such shareholder for payment of sum of twenty thousand dollars, the amount of said assessment so made as aforesaid under and by virtue of the order of the Comptroller of the Currency, hereto annexed and marked "Schedule B," as aforesaid.

And the said plaintiff avers that, by reason of the premises, the said defendant has become and now is indebted and liable to pay to the plaintiff, as such receiver, one hundred per cent. of the amount of said capital stock—that is, one hundred dollars upon each and every share so held and owned by the said defendant at the time of the declared insolvency, failure, and suspension of said banking association as aforesaid, and which said liability or indebtedness of the defendant amounts in the whole to the sum of twenty thousand dollars, which said sum of money so due, owing, and payable to the said plaintiff as receiver aforesaid, though often requested, the said defendant has not paid *the same*, or any part thereof, but has wholly neglected and refused, and still does neglect and refuse, so to do.

The defendant owes the plaintiff the said sum, with interest thereon, which is demanded, to the damage of the said plaintiff, as he says, the sum of thirty thousand dollars, which shall then and there be made to appear, with other due damages.

SCHEDULE A. Referred to in foregoing declaration.

WASHINGTON, *May* 22, 1882.

Whereas it appears from the report of proceedings of the board of directors of the Pacific National Bank of Boston, located in the city of Boston, county of Suffolk, and State of Massachusetts, at a meeting held on May 20, 1882, that the said bank is insolvent, and being satisfied that the said bank is insolvent and unable to pay its just and legal debts:

Now, therefore, I, John Jay Knox, Comptroller of the Currency, in pursuance of the power and authority vested in me by law, and under the provisions of sect. 1 of an act of Congress entitled "An act authorizing the appointment of receivers of national banks, and for other purposes," approved June 30, 1876, do hereby appoint Linus M. Price receiver of the Pacific National Bank of Boston, with all the powers, duties, and responsibilities given to or imposed upon a receiver under provisions of the Revised Statutes of the United States which authorize the appointment of a receiver.

In witness whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this twenty-second day of May, A. D. 1882.

[L. S.] (Signed) JOHN JAY KNOX,
Comptroller of the Currency.

SCHEDULE B. Referred to in foregoing declaration.

In the Matter of "THE PACIFIC NATIONAL BANK OF BOSTON," MASS.

To all whom it may concern:

This is to certify that I have taken an accounting of the condition of the estate of the Pacific National Bank of Boston, Mass., aforesaid, and of its assets and liabilities, and I do find and determine, upon data satisfactory to me, that in order to provide

the money necessary to pay the debts of said association it is necessary now to enforce, to the extent hereinafter mentioned, the individual liability of the shareholders of said association provided for by the twelfth section of the act of Congress entitled "An act to provide a national currency," approved June 3, 1864, and by sect. 5151 of the Revised Statutes of the United States, approved June 22, 1874, and to that end, and in pursuance of the powers vested in me by the said acts, I have made, and hereby order and make, an assessment or requisition upon the shareholders of said association or bank, and each and every one of them, equally and ratably, to the amount of one hundred per centum of the par value of the shares of the capital stock in the said association held or owned by them, respectively, at the time of its failure or suspension, and I direct Linus M. Price, receiver, heretofore appointed, of the said association, to take the necessary proceedings, by suit or otherwise, to enforce to that extent the said individual liability of the said shareholders.

In witness whereof I have hereto set my hand and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this twenty-seventh day of November, A. D. 1882.

[L. S.] (Signed) JOHN JAY KNOX,
Comptroller of the Currency.

At the same term the following answer is filed:

Answer. (*Filed June* 8, 1885.)

Linus M. Price, defendant, reserving all right of exception and objection to said bill of complaint, for answer thereto, says: He admits that he is the receiver of the Pacific National Bank, and says that he was duly appointed and qualified as such on or about May 22, 1882, by the Comptroller of the Currency of the United States, and that by the order of said comptroller he instituted or caused to be instituted the action at law described in said bill, and a copy of the declaration in which is annexed to said bill, marked "A," and said suit is now pending and is being prosecuted, as in said bill is alleged. He says and avers that the facts set forth in said declaration, and as alleged therein, are true, and can be and will be proved to be true at the time of trial in said action when reached.

12 He denies that said complainant has ever satisfied and extinguished the liability alleged in said declaration, and says the contrary thereof is the truth, and that the amount claimed of said complainant in said action at law is legally due, should be paid, and can be recovered in the same.

He says that it is true that said bank suspended payment on or about Nov. 18, 1881, and that its capital stock had become then impaired by losses or otherwise; that Daniel Needham, a regular bank examiner, was put temporarily in possession of its property and assets for the purpose of examining into its condition, and that he held possession of the same for some time for such purpose; but he says that said bank subsequently, to wit, on or about

March 18, 1882, was permitted to and did open its doors and resume business again as a national banking association, and continued to do a banking business in that capacity continuously from that time until May 20, 1882, when it failed and became insolvent, and this defendant was appointed receiver as aforesaid, and took possession of its property and assets for the purpose of winding the same up according to law.

This defendant, further answering, says that after the said suspension, on Nov. 18, 1881, and before the said resumption, the shareholders, at a regular meeting duly called, resolved voluntarily to assess themselves and severally to pay an amount equal to the par value of their several shares of stock for the purpose of paying and making good the deficiency in the capital stock, which had become impaired by losses or otherwise; that the shareholders proceeded to do this accordingly, and that complainant, among others, as the holder or owner of two hundred shares of said capital stock, paid to said bank $20,000, the amount of its said voluntary assessment, and for the purposes aforesaid.

As to each and every one of the allegations made and contained in said bill as to representations made to said complainant by said Needham, or any one else, as fully set forth in said bill, this defendant has no personal knowledge, information, or belief, so that he can neither admit nor deny the same, and he therefore leaves it for complainant to prove each and every one of the same, if material, which he denies.

13 Certain it is that the said voluntary assessment was made and paid by said complainant and other stockholders for the purpose of making good the capital stock, which had become impaired as aforesaid, and to pay the deficiency caused thereby, the same having been made and paid under the provisions of law in that behalf; that the same was entirely independent of and in no way connected with the assessment made by the Comptroller of the Currency and sought to be recovered in said action at law.

This defendant denies that the money collected and paid under said voluntary assessment was paid all to creditors who had claims against said bank at the time of its first suspension as aforesaid, or that the creditors among whom the same was distributed were or are the same and no others for whose benefit this defendant now seeks to recover in said action at law; and says that, after said voluntary assessment was made and collected, in greater part at least, said bank resumed business, and was allowed to resume business by the said Comptroller of the Currency, by the desire and request of the directors and stockholders thereof, who represented the bank to be then solvent and with its impaired capital restored; that it resumed business on or about March 18, 1882, and continued to do banking business until May 20, 1882, and meanwhile contracted new debts and liabilities, which existed at the time of its final failure.

As to all other matters and things set forth in said bill of complaint and not hereinbefore specifically admitted or denied, this de-

fendant denies the same, the same as if each statement and allegation was repeated herein and denied separately and specifically in its order.

This defendant says that he is entitled to be allowed to proceed with said action at law; that the same is brought by the direction, and is being prosecuted under the orders of the said Comptroller of the Currency; that he has a good right of action, as set forth in said declaration, which he proposes to prove and maintain.

He denies that complainant has set forth any cause or case calling for the interposition of a court of equity, or such as gives this court any jurisdiction in equity; he says that everything which complainant has set forth in said bill, if true and constituting any defence, can be availed of by it in said action at law; all of which he
14 is ready to maintain and prove. He, therefore, prays to be hence dismissed, and for his costs.

LINUS M. PRICE.

RANNEY & CLARK,
For Defendant.

At the same term the following replication is filed:

Replication. (*Filed June* 11, 1885.).

This repliant, saving and reserving to *him*self all and all manner of advantages of exception to the manifold insufficiencies of said defendant's answer, for replication thereto, saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that the answer of said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

By BENJAMIN N. JOHNSON,
Its Attorney.

Publication of the testimony having passed, this cause is
15 & 16 set down for hearing and fully heard by the court, and, after mature deliberation thereon had, the following decree is entered:

Decree. (*Entered Sept.* 3, 1885.)

It is now, to wit, Sept. 3, 1885, ordered, adjudged, and decreed by the court that the bill of complaint in this cause be, and the same is hereby, dismissed with costs for the defendant, taxed at ——.

From this decree the complainant in open court claims an appeal to the Supreme Court of the United States, and gives good and sufficient security that it will prosecute its appeal to effect and answer all damages and costs if it fails to make its plea good, and said appeal is allowed.

A true record.

JOHN G. STETSON, *Clerk.*

17 The following is an agreed statement of facts used at the hearing of said cause before said circuit court pursuant to the agreement thereto annexed and printed on page 91 of this record:

Agreed Statement of Facts.

Statement of certain facts admitted by both parties.

The Pacific National Bank was organized and constituted a corporation as a national banking association, by virtue of the laws of the United States relating to national banks, on or about the tenth day of October, 1877, and located in Boston. Its articles of association, marked "Exhibit 1," and also its by-laws, marked "Exhibit 2," are hereto annexed.

The capital stock was fixed in said articles of association at $250,000, with the right to increase the same to a sum not exceeding $1,000,000. The capital of $250,000 was paid in cash, and said bank commenced and continued the banking business with that capital until the eighth day of November, 1879, when its capital was increased to $500,000, and the increase paid in in cash; and said bank continued its business until on or about the thirteenth day of September, A. D. 1881, when certain proceedings were had with reference to a further increase of the capital stock to $1,000,000. These proceedings were as follows: A vote was recorded upon the directors' minutes purporting to have passed at a meeting of the directors of said bank held in Boston, Sept. 13, 1881, increasing the capital stock to $1,000,000, a copy of which record of the meeting is hereunto annexed, marked "Exhibit 3."

The board of directors consisted at that time of twelve persons.

A notice of the passage of that vote was sent by the cashier of said bank to each stockholder, a copy of which is hereunto annexed, marked "Exhibit 4."

The whole amount of the increase of capital to $1,000,000, being $500,000 in addition to the old stock, was never taken or paid in, and no notice was ever transmitted to the Comptroller of the Currency that said additional $500,000 had been paid in, or that the whole amount of such proposed increase of the capital to

18 $1,000,000 had been paid in; and the comptroller never issued a certificate stating that said capital stock had been increased to the amount of $1,000,000, voted on said thirteenth day of September, 1881, as hereinbefore stated; nor did said comptroller ever certify his approval of such increase, or that it had been duly paid in as a part of the capital of said association, and no action was taken by him respecting any increase of stock from that of $500,000, except as hereinafter stated. The correspondence with the comptroller on the subject of the increase is given hereinafter.

Only $461,300 of said proposed increase of $500,000 was ever taken or paid in, all of which was paid in prior to Nov. 18, 1881, and was used in the general business of the bank with its other funds.

On the eighteenth day of November, 1881, said bank became unable to meet its debts and liabilities, suspended payment thereof,

failed to redeem its circulating notes, and thereupon closed its doors to business.

Daniel Needham, a duly appointed examiner of national banks, having made an examination of said bank, reported its condition to the Comptroller of the Currency, and was on said eighteenth day of November, 1881, placed in charge and possession of said bank and all its funds, assets, records, and books, by said comptroller. Said bank remained under the exclusive charge and in the possession of said Needham, with its doors closed to business, until on or about March 18, 1882, the directors thereof having in the meantime no possession or control over the assets of said bank, or the moneys received or paid out on account of the bank, except under the supervision, control, and authority of said examiner.

In a report made to the Comptroller of the Currency by Examiner Needham on or about the twenty-ninth day of November, 1881, he makes the following statement, viz:

In looking over the assets and liabilities I consider the bank and its shareholders in a most precarious condition, and unless Mr. Weeks can furnish the equivalent of at least $500,000 in current funds, and the stockholders pay in $1,000,000 more, I would not consider even the possibility of reorganization; * * * the stockholders must, in any event, for the time being, sink their entire capital. * * * My view of the situation, from the first, has been of
19 the most serious character. Much of the paper upon which reliance is placed to me looks doubtful, and I am yet to be convinced that the losses may not approximate $1,750,000, possibly more.

A copy of said report, except the schedule annexed to it, is annexed, marked "Exhibit 5."

Dec. 13, 1881, the comptroller sent a letter to Needham, a copy of which is hereunto annexed, marked "Exhibit 6."

Dec. 14, 1881, Needham replied by letter, a copy of which is hereunto annexed, marked "Exhibit 7."

A copy of the resolution passed by the directors and forwarded to the comptroller Dec. 14, 1881, and referred to in Needham's said letter of Dec. 14, 1881, is hereunto annexed, marked "Exhibit 8."

During the suspension of said bank, viz., Dec. 13, 1881, the directors of said bank passed the following vote, viz:

Voted, that whereas it was voted by this board, on the thirteenth day of September last, that the capital of this bank be increased to one million dollars, and that stockholders of this date have the right to take the new stock at par in equal amount to that held by them;

And whereas the stockholders were duly notified of said vote, and also that subscriptions to the new stock would be payable Oct. 1;

And whereas $461,300 of said new stock has been taken and paid in;

And whereas $38,700 thereof has not been taken and paid in:

Voted, that said $38,700 of said stock be, and is hereby, cancelled and deducted from said capital stock of $1,000,000, and that the paid-up capital stock of this association amounts to $961,300.

Voted, that the Comptroller of the Currency be notified that the

capital of this association has been increased in the sum of $461,300, and that the whole amount of said increase has been paid in as part of the capital of this association, and that he be requested to issue his certificate of said increase to this association according to law.

On the same day J. M. Pettengill, cashier of said bank, acting under direction of said directors and upon the suggestion of the comptroller that such a certificate should be sent to him, sent the following certificate to the Comptroller of the Currency, sworn to by the cashier, viz:

20 PACIFIC NATIONAL BANK OF BOSTON,
December 13, 1881.

To the Comptroller of the Currency, Washington, D, C.:

It is hereby certified that the capital stock of "The Pacific National Bank of Boston" has been increased pursuant to the articles of association of said bank in the sum of four hundred and sixty-one thousand three hundred dollars, all of which has been paid in, and that the paid-up capital stock of said bank now amounts to nine hundred [and] sixty-one thousand three hundred dollars.

[SEAL.] J. M. PETTENGILL, *Cashier.*

Which was accompanied by a copy of the foregoing vote of the directors passed Dec. 13, 1881; upon the receipt of which the comptroller, Dec. 16, 1881, sent to the directors of the bank the following certificate:

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, *Dec.* 16, 1881.

Whereas satisfactory notice has been transmitted to the Comptroller of the Currency that the capital stock of "The Pacific National Bank of Boston, Mass.," has been increased in the sum of four hundred and sixty-one thousand three hundred dollars, in accordance with the provisions of its articles of association, and that the whole amount of such increase has been paid in:

Now, it is hereby certified that the capital stock of "The Pacific National Bank of Boston, Mass.," aforesaid has been increased as aforesaid in the sum of four hundred and sixty-one thousand three hundred dollars; that said increase of capital has been paid into said bank as a part of the capital stock thereof, and that the said increase of capital is approved by the Comptroller of the Currency.

In witness whereof I hereunto affix my official signature.

[SEAL.] JOHN J. KNOX,
Comptroller.

There was no vote of the stockholders of said association passed relating to increase or reduction of its capital stock.

On the same sixteenth day of December, 1881, the Comptroller of the Currency sent to the Pacific National Bank the following communication, viz:

21 WASHINGTON, *Dec.* 16, 1881.

The Pacific National Bank of Boston, Massachusetts:

The entire capital stock of the Pacific National Bank of Boston, Massachusetts, amounting to nine hundred and sixty-one thousand three hundred (961,300) dollars, having been lost, notice is hereby given to said bank, under the provisions of section 5205 of the Revised Statutes of the United States, to pay the deficiency in its capital stock by an assessment of one hundred (100) per cent. upon its shareholders *pro rata* for the amount of capital stock held by each, and that if such deficiency shall not be paid, and said bank shall refuse to go into liquidation, as provided by law, for three months after this notice shall have been received by it, a receiver may be appointed to close up the business of the association according to the provisions of section 5234 of the Revised Statutes of the United States.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the Treasury Department, in the city of Washington and District of Columbia, this sixteenth day of December, A. D. 1881.

[SEAL.] JOHN JAY KNOX,
Comptroller of the Currency.

And at the same time forwarded a letter to Examiner Needham as follows, viz:

WASHINGTON, *Dec.* 16, 1881.

SIR: Your letter of the 14th inst. is received and contents noted. I have this day transmitted to the directors of the Pacific National Bank of Boston my certificate of approval of the increase in its capital stock, thus making the aggregate capital $961,300, upon which an assessment of 100 per cent. has just been ordered.

You will please remain in charge of the bank, either in person or by a representative (if the latter your clerk should be selected), until the full amount of the assessment shall have been paid in, reporting to me from time to time the progress made in this direction.

Very respectfully, JNO. J. KNOX,
Comptroller.

Daniel Needham, national bank examiner, Boston, Mass.

On Jan. 10, 1882, during the time of the suspension of said bank, the stockholders held their annual meeting, being the only
22 meeting of the stockholders held since Jan. 11, 1881, the notice of which was as follows:

Pacific National Bank.

The annual meeting of the stockholders of this bank for choice of directors and for any other business that may legally come before them will be held at their banking rooms, 105 Devonshire street, on Tuesday, Jan. 10, 1882, at 11 o'clock a. m.

J. M. PETTENGILL, *Cashier.*

Which was duly published in the Boston Daily Advertiser.

A copy of the record of said meeting is annexed, marked "Exhibit 9."

The total amount paid in to said directors by the stockholders on the assessment agreed upon at said meeting [of] Jan. 10, 1882, was $742,800, and was all paid in prior to May 20, 1882.

On said March 18, 1882, by permission of the Comptroller of the Currency, the directors took possession of the assets of said bank, opened its doors to business, and continued to do a general banking business, loaning money, receiving and paying deposits, and paying debts and expenses, until the twentieth day of May, 1882, but made no losses on new loans during that period. The bank was closed to business on said May 20, 1882, and the directors voted to go into liquidation; and thereupon Linus M. Price, the defendant, was appointed receiver thereof by the Comptroller of the Currency, and has ever since been in charge of said bank and its assets, books, papers, and records.

Record of directors' meeting, Nov. 19, 1881, is annexed, marked "Exhibit 10."

Letter, Needham to Knox, Nov. 26, 1881, is annexed, marked "Exhibit 11."

The report of Needham to the Comptroller, dated March 11, 1882, embracing Needham's letter to the directors and their reply, is annexed, marked "Exhibit 12."

A communication dated March 14, 1882, signed by W. J. Best and approved by Lewis Coleman and other directors, as per their indorsement thereon, addressed to the Comptroller was forwarded to him, a copy of which is annexed, marked "Exhibit 13."

23 The reports of Needham and directors in this statement state correctly the assets and liability of the bank at the time reported, but the plaintiff does not admit that the assets were of the value therein stated.

The amount due depositors March 18, 1882, was $4,101,365.91. The amount of deposits made between March 18, 1882, and May 20, 1882, was $2,338,617.21. The amount due depositors May 20, 1882, was $2,052,957.82, of which $62,693.40 is due to new depositors.

The receiver admits that he has made as thorough and careful an examination of the assets of the Pacific National Bank that came into his possession as was in his power; that he has realized in cash therefrom $185,266.84 prior to June 23, 1883, and that the best judgment he could form June 23, 1883, of the value of the remaining assets was $290,000; that the nominal value of the assets which came into his hands at the time he took possession of the bank was about $3,400,000; that the actual value of the same assets was about $500,000; that the amount of the liabilities of the bank at the time he took possession, on the twenty-third day of May, 1882, was $2,400,000; that since June 23, 1883, he has been able to realize but a very small amount from the balance of the assets, and his present judgment is that his estimate of $500,000 was greater than the actual value of the assets when he took possession of them.

The assets which were in the bank Nov. 18, 1881, came into the respondent's hands when he took possession of the bank, except such

as had been collected and applied to the payment of the debts and expenses of the bank, and such as have been surrendered on compromise in settlement of doubtful assets.

It is admitted, subject to objection as to its competency, that the following extracts are contained in the original bill in equity this respondent—Linus M. Price, receiver, *v.* Lewis Coleman *et al.*—filed in the circuit court of the United States, in the district of Massachusetts, Dec. 20, 1883, signed and sworn to by said Price, receiver, Dec. 20, 1883, the following being the oath administered to him before John G. Stetson, United States commissioner:

UNITED STATES OF AMERICA, }
Massachusetts District, } *ss:*

DEC. 20, 1883.

Personally appeared the above-named Linus M. Price and
24 makes oath that the foregoing bill of complaint is true, except as to those matters stated on information and belief, and as to those matters he believes them to be true.

Before me—

JOHN G. STETSON,
U. S. Commissioner.

—namely:

"On or about the tenth day of January, A. D. 1882, the bank made a voluntary assessment of its shareholders, and called upon them to pay in an assessment of one hundred per cent. on the par value of the stock, * * * and the sum of $742,800, or thereabouts, was paid in cash as the, or a part of the, said voluntary assessment, but the rest remained unpaid on the twenty-second day of May, A. D. 1882, and has never been paid to your orator since then; that the money collected upon said voluntary assessment was exhausted and paid out to creditors and in expenses before said May 22, A. D. 1882.

"That between the said time of resumption and the time when said receiver was appointed the said bank paid out in expenses and to creditors substantially all its available assets, including all the moneys collected on said assessment since it was made; * * * that the bank (on resumption) failed to secure again the confidence of the business community; that they found that they could do, and did in fact do, very little business in banking, the bank being compelled to have a rediscount at other banks of all paper discounted by it in order to put it in funds with which to meet present liabilities.

"On or about September 13, 1881, and long before that date—just how long your orator does not know—the surplus and undivided profits of said bank, then and for some time thereafter, nominally standing upon the books of said bank had been in fact exhausted, and the capital stock of the said bank had been impaired, and in fact wholly lost through losses by bad debts and by loans improvidently made by said bank; * * * that in fact the said bank at that time had lost its entire capital and was then insolvent;

* * * that said bank when it suspended or failed, Nov. 18, 1881, was deeply and hopelessly insolvent; * * * that on Sept. 13, 1881, the directors voted an increase of the capital stock, the old stockholders having the right to take up the new stock at par; that the actual condition of the bank was misstated to or concealed from the stockholders and the Comptroller of the Currency, and thereby the stockholders were induced to take up the new stock at par, and to pay into the bank money for the same, to the amount of $461,300; * * * that the bank after obtaining the sum of $461,300 for said new stock continued in business till Nov. 18, 1881, when it failed; that at the time of the failure the capital of the bank had all been lost.

25 A printed copy of said original bill in equity, without the schedule annexed, together with all amendments thereto on file, may be referred to.

(The complainant requires section 2 of said original bill to be extended upon the record and transmitted to the Supreme Court, subject to the objections of the defendant, as stated below.

The defendant requires sections 19, 20, and 21 to be extended upon the record and transmitted to the Supreme Court, subject to the objections of the complainant; that no parts of said bill, except the extracts, are a part of the record in this case or competent evidence for the defendant.

Said sections 2, 19, 20, and 21 are printed on pages 92 to 102, inclusive, of this record as Exhibit 17 [18].)

The receiver claims that the bill in equity and the extracts therefrom inserted herein are not competent as evidence, and consents to the same being inserted and referred to herein, subject to his objection, which is insisted upon.

It is admitted that an assessment was made by the comptroller of the currency, and demand of payment thereof duly made, as is stated in the declaration in the action at law, a copy of which is annexed to the bill.

It is agreed, subject to objection as to its competency as evidence, that Linus M. Price, the respondent, is plaintiff in the suit in equity—Linus M. Price, receiver, *v.* Lewis Coleman *et al.*—now pending in the circuit court of the United States in the district of Massachusetts, No. 1876, and that he was duly sworn as a witness in that case June 23, 1883, and gave the following testimony, being a part of his direct examination by his counsel:

Int. 75. Have you the books of the bank other than the directors' minutes, which you have produced, in your possession?

Ans. Yes, sir.

Int. 80. What do you find had become of the amount of money which had been collected of the shareholders on the assessment made prior to March 11, 1882—that is, the voluntary assessment made after the first failure, and before the attempted resumption?

Ans. Of the whole amount collected of the shareholders by voluntary assessment, $742,800, my examination shows, was used by the bank to pay its debts to creditors.

Creditors to the amount of $2,104,931.26 signed an agreement of extension, a copy of which is annexed marked "Exhibit 14," all signed before March 18, 1882.

Three creditors, after March 18, 1882, and before May 20, 1882, brought suits against the bank upon claims amounting in the aggregate to $55,000, in which assets were attached to the amount of $156,000, and these suits are still pending. To dissolve these attachments bonds were given by the bank, one March 24, 1882, in the penal sum of $25,000; one April 29, 1882, in the penal sum of $20,000; one March 31, 1882, in the penal sum of $30,000.
26 On each of these bonds Lewis Coleman and John Shepard were sureties. To indemnify them against liability as such assets of the bank were placed in their hands to the nominal value of $156,000, being a part of the $3,400,000 assets which came into the hands of the receiver, and are among those classed doubtful by the receiver.

It is agreed that there are new liabilities contracted subsequent to March 18, 1882, to an amount of $200,000 (including the $62,693.40 due new depositors), being indebtedness due to individual depositors and to banks, and balance due on notes rediscounted.

The sum of $643,700 only had been paid on the voluntary assessment voted at the meeting of Jan. 10, 1882, before March 18, 1882, and $99,100 was paid in addition thereto after that date, and before May 20, 1882. The rest of the one hundred per cent. voted at said meeting has never been paid.

Circulars, copies of which are annexed, marked respectively Exhibits 15, 16, 17, were issued and sent, Exhibit 15 to the depositors, Exhibit 16 to those who had not then paid the voluntary assessment aforesaid, and Exhibit 17 to creditors of the bank. Said exhibits are to be subject to all legal objections.

BENJAMIN N. JOHNSON,
For Certain Alleged Stockholders.
A. A. RANNEY, *For Receiver.*

27 *Exhibits Annexed to Agreed Statement of Facts.*

EXHIBIT 1.

Articles of Association.

For the purpose of organizing an association to carry on the business of banking under the sections of the Revised Statutes which authorize the organization of national banking associations, approved June 22d, 1874, and of subsequent acts in addition to or amendatory thereof, the undersigned subscribers for the stock of said association do enter into the following articles of association:

First. The name and title of this association shall be "The Pacific National Bank of Boston."

Second. The place where its banking house or office shall be located and its operations of discount and deposit carried on and its general business conducted shall be in the city of Boston, county of Suffolk, and State of Massachusetts.

Third. The board of directors shall consist of from five to twelve stockholders, and the following persons: Leonard Whitney, Jr., Gideon P. Brown, Marcellus P. Springer, John H. Sanborn, Edw'd C. Huxley, Moses B. Tower, Edwin Ray, Edwin M. Fowle, J. Henry Whitaker, Arthur Sewall, George C. Rand, and Abner I. Benyon are hereby appointed directors of this association, to hold their offices as such until the regular annual election takes place, pursuant to the fourth article of these articles of association, and until their successors are chosen and qualified.

Fourth. The regular annual meetings of the stockholders for the election of directors shall be held at the banking house of this association on the second Tuesday of January of each year; but if no election shall be held on that day, it may be held on any other day, according to the provisions of section 5149 of the Revised Statutes; and all elections shall be held according to such regulations as may be prescribed by the board of directors not inconsistent with
28 the aforesaid provisions of the said section 5149 of the Revised Statutes.

Fifth. The capital stock of this association shall be two hundred and fifty thousand dollars, to be divided into shares of one hundred dollars each; but the capital may be increased according to the provisions of section 5142 of the Revised Statutes to any sum not exceeding ten hundred thousand dollars; and in the case of the increase of capital of the association each stockholder shall have the privilege of subscribing for such number of shares of the proposed increase of the capital stock as he may be entitled to according to the number of shares owned by him before the stock is increased.

Sixth. The board of directors (a majority of whom shall be a quorum to do business) shall elect one of their number to be president of this association, who shall hold this office (unless he shall be disqualified or be sooner removed by a two-thirds vote of all the members of the board) for the term for which he was elected a director, and they shall have power to elect a vice-president, who shall also be a member of the board of directors, and to elect or appoint a cashier and such other officers and clerks as may be required to transact the business of the association, to fix the salaries to be paid to them, and continue them in office or dismiss them, as in the opinion of a majority of the board the interests of the association may demand. They shall have power to define the duties of the officers and clerks of the association, to require bonds from them, and to fix the penalty thereof; to regulate the manner in which elections of directors shall be held, and to appoint judges of the elections; to provide for an increase of the capital of the association, and to regulate the manner in which such increase shall be made, and generally to do and perform all the acts that it may be legal for a board of directors to do under the Revised Statutes aforesaid; and they shall also have the power to make all by-laws that it may be proper and convenient for them to make under said Revised Statutes for the general regulation of the business of the association and the management and administration of its affairs, which by-laws may

prohibit, if the directors shall so determine, the transfer of
29 stock owned by any stockholder who may be liable to this association, either as principal, debtor, or otherwise, without the consent of the board.

Seventh. This association shall continue for the period of twenty years from the date of the organization certificate, unless sooner dissolved by the act of its stockholders, owning at least two-thirds of its stock, who may dissolve and close up the association in such manner as they may deem to be for the interest of the stockholders and creditors of the association, but subject to the restrictions, requirements, and provisions of the Revised Statutes.

Eighth. These articles of the association may be changed or amended at any time by stockholders owning a majority of the stock of the association in any manner not inconsistent with the Revised Statutes, and the board of directors or any three stockholders may call a meeting of the stockholders for this purpose.

In witness whereof we have hereunto set our hands this tenth day of October, eighteen hundred and seventy-seven.

LEONARD WHITNEY, JR.
GIDEON P. BROWN.
MARCELLUS P. SPRINGER.
JOHN H. SANBORN.
EDWARD C. HUXLEY.
MOSES B. TOWER.
EDWIN RAY.
EDWIN M. FOWLE.
JAMES H. WHITAKER.
GEORGE C. RAND.
ARTHUR SEWALL.
ABNER I. BENYON.

EXHIBIT 2.

By-Laws of the Pacific National Bank.

Elections.

SECTION 1. The regular annual meeting of the stockholders of this bank for the election of directors shall be held at its banking house on the second Tuesday of January of each year between
30 the hours of 10 and 4. Fourteen days' notice of the time and object of said meeting shall be given by the cashier by publication in some newspaper published in Boston. At said meeting three judges of the election shall be appointed, who shall hold and conduct the same, and who shall, after the election has been held, certify under their hands to the cashier the result thereof and the names of the directors elect.

SEC. 2. The cashier, upon receiving the certificate of the judges of the election, as aforesaid, shall cause the same to be recorded upon the minute book of the bank, and shall notify the directors elect of their election and of the time at which to meet for the purpose of organizing the new board.

SEC. 3. If for any cause the annual election of directors should not be held on the day above named, the board shall order the election on some other day, of which special election notice shall be given, judges appointed, and returns made according to the requirements of sect's 1 and 2.

Officers.

SEC. 4. The officers of this bank shall be a president, cashier, teller, book-keeper, and such other officers as may be required for the prompt and orderly transaction of its business.

SEC. 5. The president shall hold his office, unless he shall resign or become disqualified, for the current year for which the board, of which he shall be a member, was elected. In case a vacancy shall occur in the board of directors during the current year it shall be filled by the board.

SEC. 6. The cashier and subordinate officers shall be appointed to hold their offices respectively during the pleasure of the board.

SEC. 7. The cashier shall be responsible for all moneys, funds, and valuables of the bank which may come into his possession, and shall give bonds, with security, to be approved by the board, in the penal sum of twenty thousand dollars ($20,000) conditioned for the faithful and honest discharge of his duties, and he will faithfully apply and account for all such moneys, funds, and valuables, and deliver the same, on proper demand, to the order of the
31 directors of the boards, or to the person or persons authorized to receive them.

SEC. 8. The teller shall be responsible for all such sums of money, property, and funds of every description as may from time to time come into his possession as teller, and shall give bonds, with satisfactory security, in the penalty of ten thousand dollars ($10,000) conditioned for the faithful and honest discharge of his duties as teller, and that he will faithfully appply, account for, and pay over all moneys, property, and funds of every description that may come into his hands by virtue of his office as teller to the order of the directors, or to such person or persons as may be authorized to demand and receive the same. The book-keeper and all other officers and clerks shall give bonds, with security, in such sums as the board may require.

Seal.

SEC. 9. The following is an impression of the seal adopted by the directors of this bank :

(IMPRESSION OF SEAL.)

Conveyance of real estate.

SEC. 10. All transfers and conveyances of real estate shall be made under the seal of the bank in accordance with the order of the board, and shall be signed by the president and cashier.

Increase of stock.

SEC. 11. Whenever an increase of stock shall be determined upon it shall be the duty of the board to notify all the stockholders of the same and cause a subscription to be opened for such increase, and each stockholder shall have the privilege of subscribing for such number of shares of new stock as he may be entitled to subscribe for, in proportion to his existing stock in the bank. If any stockholder shall fail to subscribe for the amount of stock to which he may be entitled within a reasonable time, which shall be stated in the notice, the directors may determine what disposition shall be made of the privilege of subscribing for the new stock.

32 Business of the bank.

SEC. 12. The bank shall be open for business at such hours as the directors shall determine of each day in the year excepting Sundays and legal holidays.

Minutes.

SEC. 13. The articles of association of this bank and the returns of the judges of the elections shall be recorded in the minute book and also the proceedings of the directors at all regular and special sessions. The minutes of all meetings shall be recorded by the cashier.

Transfers of stock.

SEC. 14. The stock of this bank shall be assignable only on the books of the bank, subject to the restrictions and provisions of the act, and a transfer book shall be kept, in which all assignments and transfers of stock shall be made.

SEC. 15. Certificates of stock signed by the president and cashier may be issued to stockholders, and the certificates shall state upon the face thereof that the stock is transferable only upon the books of the bank, and when stock is transferred the certificates thereof shall be returned and canceled from certificates issued.

Expenses.

SEC. 16. The current expenses shall be paid by the cashier, who shall cause the same to be entered upon a book kept for that purpose and open for inspection of the board at all times.

Contracts.

SEC. 17. All contracts, checks, drafts, [and] certificates of deposit shall be signed by the president or cashier.

Examination.

SEC. 18. There shall be appointed by the board every six months, and one week at least previous to the declaration of a dividend, a committee, whose duty it shall be to examine the affairs of the bank, to count its cash and compare its assets and liabilities with the

balances on the general ledger, for the purpose of ascer-
33 taining whether or not the books are correctly kept, and whether or not the bank is in a solvent condition and can properly pay a dividend. The result of said examination shall be reported to the board at the next regular meeting.

Meetings.

SEC. 19. The regular meetings of the board shall be held on such days as the directors may determine. Special meetings may be called by the president or cashier.

Quorums.

SEC. 20. A majority of the directors, including the president, shall be a quorum to do business.

SEC. 21. These by-laws may be changed or amended by a vote of two-thirds of the directors.

EXHIBIT 3.

TUESDAY, *Sept.* 13, 1881.

Present: Messrs. Benyon, Coleman, Dyer, Shepard, Cassidy, Whitaker, March, and Fowle.

Discounted notes per record 51, Nos. 139 to 168, were approved.

Voted that the capital of this bank be increased to one million dollars, and that stockholders of this date have the right to take the new stock at par in an equal amount to that now held by them.

Attest: J. M. PETTENGILL, *Cashier.*

EXHIBIT 4.

A. I. Benyon, president. J. M. Pettingill, cashier.

PACIFIC NATIONAL BANK, 105 DEVONSHIRE STREET,
BOSTON, *Sept.* 13, 1881.

At a meeting of the directors of this bank, held this day, it was "Voted that the capital of this bank be increased to one million dollars, and that stockholders of this date have the right to take the new stock at par in equal amounts to that now held by them."

34 Subscription to the new stock will be payable October 1st. Parties desiring to anticipate payment will be allowed interest to that date at four per cent. per annum.

J. M. PETTINGILL, *Cashier.*

EXHIBIT 5.

Report of Bank Examiner to Comptroller, Nov. 18, 1881.

No. of bank, 2373.

Examiner's report of the condition of the "Pacific National Bank," located at Boston, in the county of Suffolk, State of Massachusetts, at 6 o'clock p. m., Nov. 18, 1881.

A. J. Benyon, president. J. M. Pettengill, cashier.

Resources:

			Dollars.	Cts.
1.	Notes and bills discounted		4,186,300	27
2.	Overdrafts		26,539	55
3.	U. S. bonds to secure circulation		500,000	00
4.	U. S. bonds to secure deposits			
5.	U. bonds on hand			
6.	Other stocks, bonds, and mortgages See general remarks.			
7.	Due from app'd reserve agents, viz		273,500	00
8.	Due from other national banks		151,700	43
9.	Due from State banks and bankers		4,322	84
10.	Banking house	$		
11.	Other real estate			
12.	Furniture and fixtures			
13.	Current expenses	$22,232 73		
14.	Taxes paid	289 62		
			22,522	55
15.	Premiums paid		8,593	75
	Interest		38,431	54
	16. Checks and other cash items		1,466,243	84
35	17. Exch's for C. H., includ'g gold ch'ks			
	18. Bills of other national banks		9,694	00
19.	Bills of state banks			
20.	Fractional currency (includi'g nickels)			
21.	Specie, viz:			
	Silver coin	$3,049 68		
	Gold coin			
	Gold treasury notes			
			3,049	68
22.	Legal-tender notes			
23.	U. S. cert's of dep. for legal tenders			
24.	5 p. c. red'n fund with Treas. U. S.		13,500	00
25.	Other funds with Treas. U. S.			
	Cash short		5,311	19
	Total		$6,709,709	44

Liabilities:

		Dollars.	Cts.
1. Capital stock paid in		$500,000	00
New " "		461,370	00
2. Surplus fund		74,142	82
3. Discount	$65,135 67		
4. Exchange			
5. Interest			
6. Premiums			
7. Profit and loss	7,080 05		
		72,215	72
8. Circulation received	$450,000 00		
On hand and returned			
		450,000	00
9. State bank circulation outstanding			
10. Dividends unpaid		435	00
11. Individual deposits, viz:			
Subject to check	$1,062,540 10		
Demand certif's	1,695,500 35		
Time certificates			
Certified checks			
Cashier's checks			
		2,758,140	00
12. United States deposits			
13. Deposits of U. S. disbursing officers			
14. Due to national banks		1,473,240	18
15. Due to State banks and bankers		137,695	18
16. Notes and bills rediscounted		685,589	61
17. Bills payable			
Cash over		96,879	48
Total		$6,709,709	44

Dividends and Surplus.

(Section 5109 of the Revised Statutes of the U. S.)

Date of last dividend, July 1, 1881; amount, $15,000; carried to surplus, $14,239.48.

Loans and Discounts.

On paper with two or more individual or firm names	$2,265,315 17
On single-name paper (one person or firm), without other security	301,518 35
On mortgages and other real estate security	252,659 17
On U. S. bonds payable on demand	
On other stocks, bonds, etc., payable on demand	1,366,807 58
All other loans	

Included in the above are—

Bad debts, as defined in section 5204 of the Revised Statutes of the U. S.	
Other suspended and over-due paper	371,095 87
Liabilities of directors (individual and firm) as payers	204,747 30

Loans exceeding the limit prescribed by section 5200 of the Revised Statutes of the U. S., viz:

N. M. Jewett, $100,000; Henry Waterman, $140,000; Geo. E. Horn, $100,000; Chicago, Burlington & Quincy R. R. bonds, $100,000; Katahdin railroad bonds, $99,500; T. C. Weeks, $192,850.

37 *General Remarks.*

Directors Pacific National Bank.

Leonard Whitney.	Geo. N. March.
E. M. Fowle.	Lewis Coleman.
Arthur Seward.	Edwin Ray.
John E. Cassidy.	J. H. Whitaker.
M. P. Springer.	John Shepard.
J. H. Sanborn.	A. I. Benyon.

In my last examination of this bank I called especial attention to its manner of making loans by the issuing of certificates of deposit, and suggested that, in a financial crisis, such a system might be attended with peril. I also called attention to the names of parties who were borrowers, many of which were new to me, and to the character of the collaterals, many of which I know nothing about.

During my examination, which continued through many days, at times entire days, and at times fragments of days, with examinations elsewhere carried on to a greater or less extent, I saw some of the directors, Mr. March and Mr. Whitney more than any others, but to all that I saw I expressed anxiety for the welfare of the bank, on account of its loans based on its credit, represented by certificates of deposit, and the peculiar character of many of its collaterals, about which I knew nothing, and urged the importance of a careful examination of the paper and securities of the bank and of the president's manner of doing business. The gentlemen that I saw all assured me that my urgently expressed requests should be complied with, and I felt comparatively easy, for I knew that my examination had been thorough, and, if the loans were good, the bank was in a healthy and prosperous condition.

The promises made, however, were never kept; and subsequently to the forwarding of my report to the comptroller, when I inquired of Mr. March, who is still one of the board of directors, if the examination by the directors had been made, he replied that it had not; that the directors met for the purpose of examination, and the president, being informed of the purpose of the meeting of the directors, "flew into a passion" and said, "If the directors cannot trust the thorough examination of Col. Needham I will resign." Other conversation between a member or members of the board and the president was had on this matter, and the examination was abandoned. I replied to Mr. March in language substantially as follows: The responsibility of the bank is upon the directors, and they can never shield themselves by placing it upon the president.

Had the examination of the directors been made the char-
38 acter of the collaterals and the system of doing business by the president would have unquestionably been changed, and the result would have been different.

In reading the reply of the president to the letter of the comptroller of Feb. 19th I find that he promised to comply with the express wishes of the comptroller, but it was in promise alone that the compliance was made. A more reckless management than had ever before been conceived almost immediately after began. The credit of the bank was loaned to a greater and greater extent, and the ambition of the president seemed to be not so much security as how large he could swell his loans with a pledge of the borrower that the certificates of deposit on the money loaned should not be drawn for a period of time after the loan was effected.

For instance, in September, 1881, he loaned one hundred thousand dollars to Geo. E. Horn, of New York, and took as the only security a blank check signed by John Steward. This check has only the signature, no date, no amount, and might have been given for one thing or another, or, as far as I could see, might have been stolen from a check book. We have written to New York to make inquiry, but as yet have no reply.

Another instance: Oct. 7th, 1881, N. M. Jewett borrowed the credit of this bank to the amount of eighty thousand dollars, and an acceptance of an item of real estate to the amount of twenty thousand dollars established an aggregate debit of one hundred thousand dollars. Where the item of real estate called twenty thousand came from I am as yet unable to ascertain. The bank now shows to represent this hundred thousand dollars a mortgage of real estate in Boston, and, so far as I can see, the security was taken for an original debt and is contrary to the statute.

One instance more will be enough to completely establish my charge of reckless management. In October, 1881, the bank loaned its credit to Henry Waterman for one hundred thousand dollars, and took for security $143,800 of the stock of the Southern Maryland railroad, which has no market value, and is, at the best, a very doubtful matter.

Now, at these times, the bank was absolutely poor, had no money whatever to loan, and the only possible advantage it could get was the temporary use of the means which its credit thus loaned represented, the parties promising not to draw on the credit for two or three months. It seems almost impossible to believe that these and many other equally hazardous transactions were entered into without some ulterior and hidden motive on the part of the president, but I have in vain failed to find one.

The certificates of deposit, in a large number of instances, represent the legitimate deposits of money; many of these draw interest. How large a number are certificates representing credit only I am unable to determine, but evidenly this amount is of great
39 magnitude. I enclose herewith paper marked "A," which will show the individual and total certificates issued.

In the same way, by the issuance of certificates under promise

that the money should not be drawn for a period of time, although no such expression is indicated on the certificate, the bank has carried on, within the last eight months, an enormous real-estate business, to wit:

Of the Home Savings Bank it has purchased real estate in Newton	10,000	
From the same bank, real estate in Boston	10,000	
From the same, another item of real estate in Boston	4,500	
From the same, French's wharf	22,759	17
From the Mercantile Savings Institution, real estate in Boston	40,000	

These are all original and illegal transactions. The deeds of the first-named items bear date in Oct., 1881; of the third named, Apr. 4th, 1881; of the fourth, Oct. 12th, 1881, and of the fifth the date is Jan. 17th, 1881. I said to the president, in the presence of the directors, no such property was in this bank on the 31st of January, 1881, and he admitted, in all their presence, that the trade was not consummated until February, 1881, and that the deed was dated back. Most of this property is subject to mortgages, which the bank must carry if it continues to hold, and the bank holds nothing but the equities in its assets.

Together with the directors I have carefully gone over the call loan (so called), the aggregate amount of which, in round numbers, is sixteen hundred thousand dollars; and in marking off what might be considered doubtful we have an aggregate of nearly one hundred thousand dollars, which would need time and care, and, if it came at all—and very likely a large portion of it might—would come very slowly.

This is independent of the one hundred thousand dollars of Horn to which I have heretofore alluded, and which has attached to it the blank check of John Steward.

In the discounts there appears the enormous aggregate of three hundred and seventy-one thousand and ninety-five $\frac{87}{100}$ "overdue."

This enormous amount has accumulated from about twenty thousand dollars at the time of my January examination. I herewith send a detailed statement, marked "B." Many of these items have collateral, and are undoubtedly collectible, but a large amount will very likely be slow of collection.

The bank has lodged at the Central National Bank of Boston collateral to secure loans amounting to	$238,502	55
At the Five Cents Savings Bank	107,000	
At Brown, Riley & Co.	10,000	
At the Howard National Bank	115,000	

40 *to secure loans*, which, with the exception of the loan at the Central National, have a margin which will undoubtedly be realized to apply to the unsecured liabilities of the bank.

At the Central National, independent of the indebtedness acknowledged by this bank, is a claim of two hundred and fifty thousand dollars, which this bank holds nothing to represent. This claim on

the part of the Central has the *prima facie* evidence of the checks of this bank on the Eliot. There is no doubt but that Mr. Weeks owes this amount to somebody; he admits that; but there is no evidence that he owes it to the Pacific. How the Central National comes in possession of the checks of the Pacific, if it does not owe it that amount, has been a matter of protracted investigation by me.

I have reached the conclusion that the checks were temporarily loaned and not returned, or that they were given for a consideration, and the representative of that consideration has been mislaid or destroyed.

The prospect of litigation to establish this question is very good.

"Other stocks, bonds, and mortgages" I called attention to in my preliminary report, of which I desire this to be the concluding part. That there would be a large loss on these items if a forced sale was made there can be no doubt.

All of the bank balances have been verified, with the exception of those noted on the sheet, which I herewith send, marked "C." I do not think the differences of unverified balances are of any considerable magnitude.

I herewith also send a sheet marked "D," which contains a full and complete list of the cash items as they appear in the bank. Many of these items are undoubtly collectible, and no excuse but reckless negligence on the part of the president and cashier can explain their accumulation. The Weeks checks, which constitute the great bulk of the list, to wit:

Aug. 9th, 1881.	Check on Broadway National Bank, drawn by Weeks to the order of Day		10,000
" 19, '81.	Drawn by Weeks to the order of Day		50,000
Sept. 3, '81.	"	"	25,000
Nov. 15, '81.	"	"	20,000
" " "	"	"	25,000
" " "	"	"	50,000
" " "	"	"	50,000
" " "	Check of Nat'l Security Bank by Weeks to the order of Day		20,000
" " "	On North Nat. Bank by Weeks to the order of Day		75,000
" " "	On North Nat. Bank by Weeks to the order of Day		50,000
" 17, "	On North Nat. Bank by Weeks to the order of Day		877,500
	Aggregating		1,262,500

41 [are] unsecured. No difficulty was experienced in passing Weeks' checks through the clearing house until Aug. 9th, 1881, when ten thousand dollars came back and was carried in cash items. On Aug. 19th one of fifty thousand dollars came back and was placed in cash items. On the 15th day of October checks aggregating three hundred and fifteen thousand dollars came back, and this decided the temporary fate of the bank.

The check given on the seventeenth was a check in settlement, and according to the books of this bank represents the entire balance due from Weeks to this bank.

The transaction of taking checks of this bank on the Eliot National Bank, and paying in checks drawn on other national banks which went regularly through the clearing, had been prosecuted by Weeks to a greater or less extent for a year. During this long time the transactions were made to balance every night. The transactions began in a comparatively small and, so far as I can see, in an apparently legitimate*ly* way. From time to time they grew until the aggregate reached well into a million a day.

In the earlier history of these transactions, and for a long time afterwards, reaching into the early summer, many gentlemen believe that Mr. Weeks was perfectly solvent, and, had it not been for the crisis precipitated by the assassination of the President, his failure would not have occurred. Be this as it might there can be no question as to the illegitimacy of these transactions, out of which the Pacific National Bank never realized one single dollar. No motive, except to do an immense business, can be assigned for the strange conduct in allowing these transactions on the part of the president.

In looking over the assets and liabilities I consider the bank and its shareholders in a most precarious condition, and unless Mr. Weeks can furnish the equivalent of at least five hundred thousand dollars in current funds, and the stockholders pay in one million more, I would not consider even the possibility of reorganization.

I come now to the final consideration of this terrible catastrophe—terrible to the innocent depositors, who may have the inconvenience of long delay and possible loss; terrible to the shareholders, who must in any event, for the time being, sink their entire capital; terrible for the directors, who had timely warning from the examiner and from the honorable Comptroller of the Currency with regard to the illegal and careless manner in which the president was conducting the business of the bank, and terrible for the business interests of society, which receives the shock of violated trust so detrimental to all its interests.

Bringing the first great fault to the door of the directors, who, when notice was given, should have persisted in a most rigid examination, I come to the cashier. In his custody were the funds of the bank. To him was submitted every item intended for the clearing. He was a man of long experience. He was taken from
42 a neighboring bank, and the directors were influenced in his selection by his reputation of a careful and conservative man. No one knew better than he that clearing-house checks always represented cash. Out of his hands every day passed the checks that were given to Weeks, and it was for him to know whether or not he received an equivalent.

Could it be possible that for months a business of drawing and balancing checks on the part of Mr. Weeks could have been continued from day to day and a man of long and varied experience like the cashier of this bank have no suspicion? If it is possible to imagine that for the nine months of increasing business of this character the

cashier had no suspicion on the ninth day of August, 1881, when the first check of Mr. Weeks' of ten thousand dollars came back, there could be excuse no longer, but even then no communication was made to a single member of the board of directors, and the drawing of checks and the acceptance of Weeks' checks as an equivalent went on.

On the 19th of August a check of $50,000 came back, but still not a word from the cashier, and on the third of September another of $25,000, but yet not a word, although these returned and dishonored checks were entered day after day in "cash items" by the teller. The transactions still continued without one word of disclosure being made to the directors from this trusted servant, who was receiving a large salary to guard the interests of the bank.

Confidence must begin somewhere; without confidence there can be no credit; without credit there can be no bank; without the bank there can be no extended business. The directors had the right to confide in their cashier, certainly to the extent that he would not accept in exchange for the funds of the bank in the form of a clearing-house check anything that was not the equivalent of money. The cashier cannot hide behind the president. He is an independent officer of the bank, and his duties are well and clearly defined. His trust has been violated, and the immediate cause of this disaster is chargeable to him.

The president of this bank must be next considered. He was made president of this bank when the fiery tongue of scandal was pursuing him with relentless ardor. How has he returned the confidence so freely given? No one knew better than he what was and what was not legitimate banking. He knew, for the Comptroller of the Currency had told him, that loaning the credit of the bank was illegitimate and perilous business. He knew that making loans through the medium of certificates of deposit was more dangerous than making loans on legitimate deposits. He knew the transactions of buying real estate, loaning on real estate, loaning in excess of the limit, loaning by the hundreds of thousands of dollars on questionable security and in a careless manner were all blameworthy and reprehensible. He knew that securing the deposit of a life insurance company by taking out life policies on himself and son
43 and charging the premium of $1,041.05 to the bank was unparalleled in the history of banking. He knew that buying old stone taken as debris from city houses and issuing certificates amounting to eleven thousand dollars therefor was monstrous and reckless. He knew that continuing to prosecute his business in a manner condemned by the comptroller, and without asking the directors to share with him in the responsibility, was high-handed and unjustifiable. There is no excuse for these two high, trusted, executive officers of the bank.

The matter is still under advisement whether the stockholders will make good the losses or the bank go into the hands of a receiver.

The principal part of the "cash over" in the statement forwarded as a preliminary report belonged in the loan account. The principal

part of the discrepancy in the loan account was the result of our hurried manner in taking it, and is now mostly explained.

The real estate all appears in the call loans, and I have treated it under the head of "on mortgages and other real estate security."

The classification of the loan is the best I could give in the present condition of affairs, time collateral loans being treated with the two-named paper.

In "other suspended and overdue" I have classified all the overdue and bad debts, finding it difficult to determine how much of this amount should be treated as "bad debts." My own judgment is that a very considerable amount of the "other suspended and overdue" should strictly be treated that way.

The question has been raised as to whether the new stock is liable to assessment under the law, the increased capital not being all paid in. Can you give me information on this point, as it is very important in the reorganization?

Of illegal and illegitimate transactions not mentioned elsewhere in this report may be stated the following:

An agreement with Taunton Savings Bank to deliver a deed of fifteen houses on Madison Square, Boston	----	7,500
Four bonds of Nantasket Co.	4,000	
One bond Pleasant Valley & Utah	1,000	
Taken of stockholder to represent balance due on new stock of the bank and standing in the assets as	----	5,000
100 shares Pacific National Bank stock purchased for a customer, but no agreement by which the customer can be held	----	10,400
Three notes of W. B. Worcester, 6,000	----	18,000

Worcester being a man whose responsibility and place of business are both unknown. In some form or other I have alluded to the most striking features of the loan account. In summing up the situation I have to say that on the 26th instant I made a statement of the condition of the bank to the directors. This statement I pre-
44 ferred to put in writing, but as they objected to that, fearing it might reach the public and thus prejudice their case, I submitted it without manuscript. On the 29th, at the request of the directors, I made a statement to some forty gentlemen, composed of the directors and the largest stockholders of the bank, who had been invited in for consultation. This statement was also, at the request of the directors, made without manuscript, although, being made to a promiscuous body, it was much less complete than my first statement to the bank. At the adjournment of this meeting I was waited upon by a committee and presented with a letter, of which the following is a copy: Boston, Nov. 29th, 1881. 'Col. Daniel Needham, bank examiner. Dear Sir: At a meeting of the stockholders and directors of the Pacific National Bank held this day at the office of the association the following resolutions were adopted unanimously: Resolved, That the thanks of the directors, stockholders, and depositors of the Pacific National Bank are due, and are hereby ten-

dered, to Col. Daniel Needham for his earnest efforts to ascertain the condition of the bank, as well as for the valuable suggestions he has made looking to its reorganization.—Signed, Lewis Coleman, chairman. I take the liberty to incorporate this communication into this report. The names of the directors, which will be found under the head of general remarks, are among the most honored names of Boston's business men, leaving out the name of A. I. Benyon. My view of the situation from the first has been of the most serious character. Much of the paper upon which reliance is placed to me looks doubtful, and I am yet to be convinced that the losses may not approximate seventeen hundred and fifty thousand dollars—possibly more. Although it must be admitted that the dishonored checks of Weeks precipitated this disaster, it is to me equally clear that the enormous issue of certificates as a matter of credit on illegal and questionable loans would have brought ruin in the end, and that the end could not be far off. In conclusion I can only say I have failed to find an explanation of these strange transactions, and, if not based upon criminality, must be explained by idiocy or insanity. I shall advise the Department immediately of the conclusion reached by directors.

DANIEL NEEDHAM, *Examiner.*

To the Comptroller of the Currency, Washington, D. C.

45 EXHIBIT 6.

TREASURY DEPATMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, *December* 13, 1881.

SIR: I had a conference with the committee who arrived here yesterday in reference to the affairs of the Pacific National Bank

It is proposed to make an assessment for the full amount of the stock of the bank, and it is believed that when this is paid up the capital stock will be unimpaired and the bank in possession of abundant funds to meet all their obligations.

I request that you will, immediately on receipt of this letter, write me in reference to the present condition and prospects of the bank, and if you see any reason to doubt its ability to resume business, as proved.

Very respectfully, JNO. JAY KNOX,
Comptroller.

Daniel Needham, Esq., nat. bank examiner, 45 Milk street, Boston, Mass.

EXHIBIT 7.

OFFICE DANIEL NEEDHAM, NATIONAL BANK EXAMINER,
45 MILK STREET, BOSTON, *Dec.* 14*th*, 1881.

SIR: Your letter of the 13th is at hand.

In reply to your inquiry I will say: If Weeks will pay in on his unsecured loans five hundred thousand dollars, as has been proposed, and the arrangement with the Central National Bank with reference

to the adjustment of the disputed claim is perfected and an obligation is given by the directors guaranteeing a certain amount of doubtful paper, which amount is stipulated in the resolution, a copy of which, after its passage, will be immediately forwarded to you by the board, then an assessment of one hundred per centum on the present capital of the bank, as it now stands on the books, would, in my judgment, make the bank solvent.

46 Many of the directors have the full confidence of the public, and, under the conditions I have specified above, I should have no doubt of the full ability of the bank to resume.

In speaking of the present capital upon which assessment must be made, I mean the old $500,000, together with the new $461,300, making subject to assessment $961,300. In my judgment it is most important that the bank should be revived if possible.

If it falls, the Central National must also fall, and the widespread injury could not be estimated.

I am gratified to say that the condition of the bank has been strengthened since it has been in my charge by the securing of some questionable debts, and careful management will undoubtedly save to the bank a large amount which would otherwise be lost.

If the bank goes on upon the plan now laid out, and which will be presented to you for approval within two or three days, and which embodies the features noted in this letter, then there must be a delay of some weeks, and I would like your approval to place my clerk in charge during more or less of the temporary absence I may make in continuing my work of examinations elsewhere.

Very respectfully, DANIEL NEEDHAM,
Nat. Bank Examiner.

To Hon. John J. Knox, Comptroller of the Currency, Washington, D. C.

EXHIBIT 8.

Resolutions of Board of Directors, Dec. 14, 1881.

BOSTON, *Dec.* 14*th*, 1881.

At a meeting of the board of directors of the Pacific National Bank, held this day at the banking-house, the following preamble and resolutions were unanimously adopted:

Whereas on the 18th day of November, 1881, it was discovered that the Pacific National Bank was unable to pay on demand its liabilities to depositors and creditors;

And whereas since the date named the directors, assisted
47 by Col. Daniel Needham, national bank examiner, and Wm. J. Best, have been engaged in an investigation to determine the liabilities and assets of said bank;

And whereas said investivation enables said directors to fix the apparent liabilities at $6,774,633.60 and the assets at the par or nominal value of $6,782,558.53, showing an apparent excess of assets over liabilities to the amount of $7,924.93;

And whereas said assets are not now worth their par or nominal value, but would probably realize in cash, with judicious management, $5,308,895.34, which would leave an apparent deficiency of $1,465,738.26;

And whereas, in the adjustment of the account of the Pacific National Bank with the Central National Bank, the latter has agreed, in the event of the reorganization of the Pacific National Bank, to yield of its alleged claims against the former the sum of $315,400, and has also agreed to return to the Pacific National Bank good assets of said bank now held by said Central National Bank as collateral to the amount of $55,252.55, thereby reducing the deficiency of the Pacific National Bank to $1,095,085.71;

And whereas, with such knowledge of the affairs of said Pacific National Bank as the directors have been able to obtain by diligent investigation and inquiry, they are of opinion that it should immediately be reorganized, in order fully to protect all of the interests involved;

And whereas the larger part of the assets of said bank consists of notes and bills discounted, of which a considerable portion could not now be converted into money without sacrificing the interests of the creditors of the association;

And whereas T. C. Weeks has returned to this bank $150,000 of its checks, and has agreed to return 350,000 of additional checks in a few days: Therefore,

Resolved, That, in the opinion of the directors of said bank, the interests of both creditors and stockholders require its early reorganization.

Resolved, That the Comptroller of the Currency be requested to authorize the stockholders of the association to levy an assessment of 100% upon the par value of the capital stock now paid in, viz., $961,300, upon condition that said Weeks shall return to this bank $350,000 additional checks, as agreed, before said assessment shall be made.

Resolved, That, in the event said bank shall be reorganized and shall resume business with the approval of the Comptroller of the Currency, the board of directors will, and they do hereby, guarantee the payment of $133,785.71 out of the assets by them classed as "doubtful" and "bad," aggregating the sum of $1,473,663.19, and now treated by said directors as possessing no present money value,

48 the condition of said guarantee being that it will cease and determine so soon and so far as the said sum of $133,785.71 shall have been realized from said "doubtful" and "bad" assets, and said directors shall be held only for so much of said sum of $133,785.71 as may not be realized from said "doubtful" and "bad" assets.

Resolved, That, in the opinion of said directors, said assessment upon the stock of said association and the said guarantee of $133,785.71 will place said association upon a sound financial basis; nevertheless, as time will be required to properly convert the assets of the association, which consist chiefly of notes and bills discounted, it is to the interest of the depositors and creditors to agree to a reason-

able extension of time for the payment of their several claims. Recognizing this fact the Central National Bank has agreed to give an extension of one year from Jan. 1, 1882, on the whole amount of its claim as compromised, viz., $500,000, at 4% per annum.

Resolved, That a copy of these resolutions be forwarded to the Comptroller of the Currency and his approval asked of the scheme of reorganization herein set forth, and that he grant the directors until Jan. 15th, 1882, to perfect said scheme of reorganization.

A true copy.

(Signed) EDWIN W. FOWLE,
Sec'y pro tem.

EXHIBIT 9.

Stockholders' Meeting.

TUESDAY, *Jan.* 10, 1882—11 a. m.

The annual meeting of the stockholders of the Pacific National Bank was held at 11 o'clock this forenoon at the bank building on Devonshire street, about one hundred and fifty gentlemen being present. The meeting was called to order by the new president, Lewis Coleman, and J. H. Whittaker, of the board of directors, was chosen secretary. The records of the last meeting were read and approved.

President Coleman briefly alluded to the suspension of the bank Nov. 18, and to the circumstances which led to placing the books and accounts of the bank in the hands of Col. Needham for examination. He then introduced the bank examiner, who presented the following report:

Col. Needham's report.

In accordance with the unanimous request of the directors of the Pacific National Bank I submit to you, somewhat in detail, the present condition of the bank and the history of the year which immediately precedes it.

49 On the 31st day of January last I came to the bank to make an official examination. I was welcomed by the president, and immediately commenced my work, taking the condition of the bank at the close of business that day. I continued the examination from day to day and time to time until its final conclusion—seeing, as I can now recall, only two of the directors besides the president, with whom I held conversation. To these gentlemen I spoke very freely of the character of the loans and the matter of issuing certificates, and urged the importance of a careful examination. In my report to the Government I called attention to what I considered defects and bad management, and, as a result of my report, the comptroller forwarded to the directors a communication, of which the following is a copy:

WASHINGTON, *Feb.* 19, 1881.

GENTLEMEN: The report of an examination of your bank, made on the 31st ult., has been received.

The report shows that the amount of funds in the bank available for reserve at the date of the examination was $196,385.17 less than the amount required by law. The deficiency is enormously large, and has, perhaps, been caused in part by the officers of the association considering and treating as available for reserve clearing-house gold certificates, which it holds to the amount of $195,000. The law, however (sec. 5192 United States Revised Statutes), provides that clearing-house certificates, representing specie or lawful money, specially deposited for the purpose of any clearing-house association, shall also be deemed to be lawful money in the possession of any association belonging to such clearing-house association, holding and owning such certificates within the preceding section; and, as your bank does not belong to the clearing-house association, the certificates referred to cannot be considered or counted as reserve. The examiner states that it would undoubtedly be for—

The interests of the other Boston banks,

as, of course, it will be for your own, to have your association admitted to the clearing-house, and it is hoped that some arrangement by which this can be accomplished will be devised and carried out. In the meantime, however, I must notify you that the reserve of the bank must be at once made good and kept so hereafter, paying due regard to the fact that the certificates above referred to cannot be counted as any portion of the lawful money reserve of the association.

The liability of —— to the bank for money borrowed is reported as amounting to ——, and, if so, is excessive, contrary to law. Sec. 5200 United States Revised Statutes provides that the total liabilities to a national bank of any person, company, corporation, or firm for money borrowed shall at no time exceed one-tenth part of its actual paid-in capital stock, and to this limit all accommodations granted by the bank should be confined. The indebtedness, if still excessive, must, without unnecessary delay, be reduced to at least the prescribed limit. It is stated in the report that ——, who is indorser upon the paper above mentioned, and also upon paper of ——, has himself borrowed —— from the bank. The examiner says that upon calling attention to the considerable amount loaned to parties, involving to a great extent the same interest, he was assured that the debt would be paid during the present month. I think that the accommodations of the bank should be more widely distributed.

50

The bank is reported to be liable to the amount of $898,812.99 upon demand certificates of deposit, of which certificates amounting to $503,500 are said to draw interest at the rate *at* from three to six per cent. With reference to the remainder of the certificates, which amount to $395,312.99, the examiner says: "Money is borrowed of —— by a pledge of discounted paper as collateral, and the said bank holds demand certificates to represent the amount. Loans are sometimes made by this

Issuing of demand certificates,

and parties securing loans in this way indorsed the certificates and pledge them as collateral, or, stipulating a time of payment for them, have them regularly discounted and thus raise money indirectly from other parties and banks. Of course such certificates do not bear interest, but the bank loans its credit, and in this way a very considerable amount of the demand certificates has been issued. I do not think this system could be classified as conservative banking. * * * In a time of general business embarrassment such a system of extended loaning might be attended with peril. There is no better established principle of law than that corporations can only lawfully exercise such powers as are specifically conferred upon them by their charters and such powers as are necessarily incidental to those granted. It has been decided by the courts that the incidental powers granted to national banks are not the incidental powers given generally to all banking institutions, but only such as are incidental to banks allowed to do such things as are prescribed by the statute, and that while a national bank has power to lend money upon personal security it has no power or authority to lend its credit.

See the case of J. & W. Seligman & Co. *v.* Charlottesville National Bank [and] of Johnston Bros. & Co. *v.* same bank, tried before the United States circuit court for the western district of Virginia during the fall term of 1878. The decision of the court will be found in the December, 1879, number of the American Bankers' Magazine,
51 pages 465–469. The practice described by the examiner is irregular, and you are notified that it

Must be at once discontinued.

The amount of rediscounted paper reported—$416,312.57—is very large, and shows that the business of the association is too much extended. While the rights of national banks in emergencies to obtain money by the rediscount of paper cannot be denied, they should not habitually do so, and it is hoped that the operations of your association will hereafter be confined to the use of the means legitimately at its command.

In this connection attention is called to the provisions of sec. 5202 United States Revised States.

The examiner states that he criticised a large loan to ——, being fully satisfied that the security thereof, merchandise, could not be held under the paper in possession of the bank, and that he was assured that the matter would receive immediate attention. It should be properly arranged if it has not been before attended to.

Please let me hear fully from you in reply to this letter at an early day, and inform me what action will be taken with reference to the various matters herein brought to your notice.

Very respectfully,

(Signed) JNO. J. KNOX,
Comptroller.

To the directors of the Pacific National Bank, Boston, Mass.

This communication, together with the answer, was evidently read in whole or in part to the members of the board who were present at a subsequent meeting, Feb. 25. The following is a copy of the letter sent by the president

In reply:

FEB. 24, 1881.

Hon. John Jay Knox, Comptroller of the Currency, Washington, D. C.

SIR: Your letter of the 19th inst., with comments on report of Examiner Needham, is received and has our attention. We beg to reply to them *seriatim*. The clearing-house gold certificates reported as counted by us in reserve have been, for reasons disconnected with the permission or requirement of the law, largely converted into coin, and the balance will be. We were aware that the clause of the law underscored by you would, technically, not permit us to hold such a reserve, but have felt that we were complying with the spirit of the law, and so exempt from censure. We daily receive and pay large amounts in our dealings with other banks, and so have
52 adopted these certificates for the same reason that the other banks did, to save the risk and inconvenience incident to an almost continuous handling of coin. We will be excused for suggesting, also, as our exclusion from the clearing-house association is purely the result of the malevolence of two or three men, who are, for the time being, in an official position, and in opposition to the wish of a considerable majority of that body, that it is unjust to us that a technical construction of the law should be made to bear upon us in a way never contemplated by the framers of the law. —— loans have been materially reduced, and before this reaches you will be still more so, and in a short time will be entirely paid.

The amount to the credit of certificates of deposit is made up mostly of amounts deposited by individuals, firms, and corporations, who, having no regular account with us, preferred to receive our certificates in place of a pass-book showing the transaction. The amount held by the * * * was so placed by mutual agreement between * * * and the writer, believing this to be

A more legitimate way

than that usually adopted, of one bank drawing upon another, and so making it appear as a bank deposit, which it really was not. We were confirmed in the propriety of this mode by the fact that it is the one in vogue by the New York banks.

In regard to "loaning our credit," we have to say that never in a single instance has any stipulation been made by us in regard to any certificate issued to any party. They are issued in regular form, and are payable at any moment on presentation. When in any case such certificates have been held it has been by those whose account would not entitle them to loans, and they have taken this mode of making their business of value to the bank.

In regard to rediscounts our position is this: We have a large and active list of depositors, and have, almost continually, more paper offered than we can do. This is well known to quite a number of our banks, who, in consequence of an inactive list of depositors, have more money than paper, and solicit of us a transfer of some of our loan. In a large majority of instances "rediscounts" are not of our seeking. In an experience of thirty years it has seemed to the writer that this is a more conservative method than the one largely in vogue among banks in this city, of borrowing daily, and in some cases oftener, such sums as their neighbors may have to spare for the moment, with a liability to be called on for repayment at a moment's notice. * * * In regard to loan of ——, fresh merchandise has been substituted for that withdrawn, and the loan, which would be considered good without any collateral, is now complete.

53 Permit us to add that in many years of banking experience in this city our views in regard to modes and methods have been fully commented upon, and in consequence have received in some cases ridicule and in many more commendation for our conservatism, which goes to show, to our mind, that conservatism is a relative term, and that which would be considered rashness in some cases and under some circumstances would, under a different condition, be the extreme of conservatism.

I remain, your ob't servant,

(Signed) A. I. BENYON, *Pres't.*

I am assured that this communication, which was interpreted by the members of the board who heard it as a promise that all the evils complained of

Should be at once rectified,

was considered sufficient, and, with a confidence in the light of present developments not easily understood, was accepted as answering all necessary action on the part of the directors, although a proposition to examine the bank by one or more of the directors was subsequently made, which, for reasons at the time given by the president, was abandoned.

On the evening of the 18th of November, after the suspension of the bank, I came into it. I found the bank in great disorder. The books had not been made up for nearly a month, and my first labor was directed to the making up of the books and ascertaining a statement of the condition of the bank from the books.

Having secured this I commenced a careful examination of the assets. In this from the first I have had the hearty and earnest cooperation of the board of directors, many of them, although they have a large business of their own, having devoted their entire time to aid in saving and securing every possible asset.

The cause of the disaster to the bank is easily discovered. It comes from and is alone based upon loaning its credit in various ways and to a remarkable extent.

Its credit has been loaned in five ways, two of which are not unusual.

1st. There have been large rediscounts of paper. The rediscounts on the 31st of January, 1881, at the time of my last examination previous to the suspension, amounted to $416,343.57; at the time of suspension, Nov. 18, 1881, they amounted to $685,579.61, an increase in the nine months and a half of $269,246.04. In rediscounting paper the bank is supposed to secure one great advantage, and that is interest to an extent on a certain amount of funds which it

54 Possesses only in its credit.

For instance, if paper was discounted at eight per centum and rediscounted at six per centum the bank would be the gainer on the line of rediscounts outstanding Nov. 18, 1881, of $13.711. But it must be remembered that the bank takes a liability on the payment of every dollar of its rediscounts.

It is generally inferred that the rediscounted paper of any bank is among the best and most legitimate business paper, and the indorsement of the bank rediscounting secures it to such an extent that it will pass current at rates of interest much below the best market rates of money on ordinary business paper.

This temptation has unquestionably been one which has resulted in very considerable disaster, a large amount of rediscounted paper already having gone to protest.

The second form in which the credit of the bank has been loaned has been in borrowing money on discounted paper and guaranteeing the paper. This amount involves the same risk to the bank as the rediscounts, and the gain to the bank by this process is in the same way—loaning at a high or fair rate of interest and borrowing at a reduced rate by guaranteeing the payment of the paper. The amount guaranteed in this way outstanding Nov. 18, 1881, was $200,000.

A third process of loaning the credit of the bank has been to arrange, in case a loan is allowed, that a certain amount shall remain on deposit for a greater or less length of time, thus securing for the bank the same amount of earnings the bank would secure if it had ready money to loan to its customers. This is not a novel feature in banking, but when practised to an abnormal extent involves risks which, as in the case of the bank, is

An item of more or less peril.

A fourth process of loaning the credit of the bank has been by the issuing of certificates of deposit. On the 31st of January, 1881, the certificates outstanding amounted to $931,975.17, and on the 18th of November, when the bank stopped, they aggregated $1,698,-916.53. The advantages supposed to be secured by the bank by this process were very great.

Parties taking certificates, with the personal promise to hold them a length of time, could unquestionably get loans, when they would

have had no chance of securing loans if the money had been paid directly from the cash. The temptation to make loans by thus securing as available cash the credit of the bank on its certificate was too great to be resisted, and although such loans, had they been good, would have resulted in enormous profits, as they stand in the light to-day, they promised large amounts of poorly-secured paper,
55 upon which greater losses may safely be calculated. Enormous amounts were loaned by this process in the few months immediately preceding the suspension of the bank, and loans of $100,000 at a time, on most questionable, if not absolutely illegal, collateral, and in violation of law, were made in several instances, and this, too, when the bank had no funds to loan.

The fifth process of loaning on credit of the bank, and which brought about a sudden ruin, was the issuing of checks on its Boston and New York correspondents without receiving an equivalent in bankable funds. The practice undoubtedly grew from a small beginning, but

Culminated in an enormous aggregate.

The process was this: The party most largely in interest would send in a memorandum in the morning of such checks on New York or Boston as might be needed for his day's business; then checks would be drawn by the cashier of the Pacific National, under the general direction of the president, and, after being regularly entered, would be given to the party in waiting in exchange for his simple memorandum. These checks would frequently amount to hundreds of thousands of dollars, and how it was that the cashier could pursue this line of illegitimate business for weeks and months and have no suspicion that there was something wrong it is impossible for me to determine. But such, he assures me, was the fact.

During the entire business hours of the day nothing but an unsigned memorandum represented the hundreds of thousands of dollars which this bank in the morning of each day drew on its correspondents. At the close of business the party receiving this accommodation brought to the bank clearing-house funds to cancel the morning obligations. These New York and Boston funds passed regularly through the clearing house until Aug. 9, 1881, at which time a check of $10,000 was held back. Up to this time it would have been difficult, if not impossible, for the directors to discover any illegitimacy in this proceeding. Clearing-house checks are always supposed to be cash, and up to the ninth day of August, 1881, every clearing-house check was regularly and promptly paid, so that taking the cash at night or in the morning would not necessarily have revealed any abnormal condition. Aug. 19 a check of $50,000 was held back, and on Sept. 3 one of $25,000. Out of this management, although the bank was in daily peril by its thus loaning its credit and its funds, the bank never realized one single dollar of advantage.

When questioned with regard to the matter the only reply which could be obtained was it done

To swell the volume of business.

Confidence must begin somewhere. In addition to that re-
56 posed in the president, the directors had a cashier taken from a neighboring bank, of good repute among those who had known him long and well. Upon him they relied for the management of the cash, and to him all these facts should have been known; but he, regarding the president as the supreme power, did not stop to criticise any act which he directed, and, therefore, in his mind no suspicion of illegitimacy entered. On the eighteenth day of November, when the final crash came, the sum total of these checks against which there was only the name of one man, aggregated $1,262,500.

Thus, in brief, has been recited the history and culmination of this sad catastrophe. The solution of these strange acts can find thus far no sufficient explanation. This is not the time or place for charges or criminations. The disaster is upon us, and the business of the hour is to meet it. There are but two ways: one is to allow the bank to pass into the hands of a receiver, in which case one hundred per centum will unquestionably be demanded of the stockholders to meet the deficit; the other is to vote an assessment of one hundred per centum, nurse the poor and doubtful debts, of which there are approximately $1,500,000, and thus realize the largest amount from the invested assets.

The detail of losses will be given by the counsel of the board of directors, W. J. Best, who has given unremitting labor to the investigation, and upon whose figures full reliance can be placed.

DANIEL NEEDHAM,
National Bank Examiner in charge of Pacific National Bank.

Address of W. J. Best.

I wish, gentlemen, that we met under pleasanter auspices than those in which we assemble here to-day. It is always an unpleasant task to a man to tell another that disaster has overtaken him. The story, however, must be told by some one. You have had a statement, full and complete, of the transactions which culminated in the suspension of the Pacific National Bank on Nov. 18, 1881. There is nothing to be added to the facts furnished in that regard by Col. Needham. What remains for me to say is simply to tell what there is in this bank with which to meet its liabilities to depositors and creditors. In ascertaining the liabilities it was necessary to have recourse to the books of account. Col. Needham has informed you that the books had not been balanced for a considerable period prior to Nov. 18, 1881. The liabilities, however, have been ascertained with the utmost care, and when I give you the amount I think you may accept it as absolutely correct. As to the assets of the bank, I deemed it unwise to use the books of account. All that I looked to was the notes and bills discounted and such stocks and bonds as were to be found in the vaults. I have handled, I believe, every note in
57 the bank, have examined it both as to its form and value, and have taken such measures as were possible, and seemed to

me necessary, to ascertain its actual value, a reasonable time being allowed to convert the assets.

The nominal value of the assets, divested of every questionable item, is $5,764,613.47, and the actual appraised value $5,049,758.82. I have reached these conclusions after blotting out more than $750,000 of claims against one man in this city, and treating as an asset only the sum which we know will be paid in probably to-day, but certainly within the next forty-eight hours.

The liabilities consist of three classes. First, there is a liability upon circulation; second, to depositors and creditors, which includes open accounts, demand certificates, rediscounts, and loans by banks and bankers to the Pacific. The whole amount of the liabilities under the second head is $5,154,592.21; the liability to stockholders is $961,300, and upon circulation $450,000, making a total of $6,565,892.21. Deducting the estimated value of the assets from the liabilities, we find an

Apparent deficiency

of $1,516,133.39. I say "apparent" because a very considerable portion of the sum named we can offset by exchanging securities and discounted paper, classed by us as "doubtful," and which do not appear in the estimated value of the estate of the bank, for demand certificates and cashier's checks now outstanding. I have traced many of these transactions, I think a majority of them, and have come to the conclusion that we may safely assume to exchange the doubtful assets for the obligations of the bank, about $370,000, which would go to reduce the deficiency. As to the remainder of that deficiency, I have proposed to the directors that it shall be met by first levying, voluntarily, upon the stock an assessment of one hundred per cent.; second, by their either putting in cash or good security for $150,000, in addition to the assessment upon the stock which they hold. This sum of $150,000 is to be repaid out of the remainder of the doubtful assets as soon as collected, and, if not collected, then they (the directors) will have put in $150,000 of their own funds to enable the bank to resume upon a sound financial basis. There is also a credit of some $35,000 as margins upon loans standing in the name of individuals through whom the late management of this bank borrowed money, the collateral of the bank being pledged as security for its payment. These loans could have been retired long since with funds collected since the date of suspension, but no transaction of that nature could be permitted by the national bank examiner. As soon, however, as the bank resumes there can be put into its treasury from $35,000 to $40,000, which stands in the form in which I have just stated.

58 Independently of the assets, which we consider doubtful, there is about $750,000 of a claim, as already intimated, which we take no notice of whatever, and which some of the best-informed men in Boston say is likely to yield a very considerable amount to the bank. The person concerned says it will all be paid as soon as he can get on his feet and be able to

Readjust his own affairs

and control his estate. There is in it sufficient to pay his entire indebtedness. But that is a mere promise, and would not serve as a basis to determine the amount of money necessary to be put into this bank to enable it to resume.

After the most careful and painstaking examination of all the bank's affairs, and having, as already explained, examined the accounts themselves, rather than take the record from the books, I have come to the conclusion that, with the assessment which it is proposed by the Comptroller of the Currency you shall to-day order upon the stock of the bank, and the guarantee fund to be furnished by the directors, there is for this bank a very bright future. Of course much depends upon the management, and that it will be proper and correct I do not doubt. During the eight weeks I have been here my efforts have been seconded most earnestly, literally day and night, by the directors, and the work which they have done in connection with myself has, to my certain knowledge, strengthened the assets of the bank to the extent of more than $500,000, as compared with their condition on the night of the 18th of November, 1881; that is to say, promises of individuals and corporations to which there is no collateral, the promise being of little or no value, have been strengthened by guarantees or indorsements, or by the putting in of good collateral, in the sum of $500,000. There are other ways in which the directors have greatly improved the condition of the bank; and if their plans should meet with your approval, as they have had the hearty approval and indorsement of the Comptroller of the Currency, I repeat the remark of a minute ago, that I see no reason why this bank may not in a short time resume business in a condition which can hardly fail to make the assessment now necessary to that end not only a safe and profitable investment, but insure beyond a peradventure a realization of perhaps 25, and maybe 50, cents on $1 of the money which has now passed beyond your control, and a dollar of which it would be impossible for you ever to get back were the bank to pass into the hands of a receiver.

In this connection, as an evidence to you that everything has been done, thus far, that was possible

59 To secure the interests

not only of the depositors and creditors, but also of the stockholders, I should state that there has been placed in my name as trustee for the Pacific Bank real and personal property which recently stood in the name of Mr. Benyon and members of his family, worth in cash, I think, $100,000. This, of course, will go as soon as it can be realized upon to help make good this great breach in your assets. I believe there are other properties, of what amount I have no knowledge at present, that we may get in the same way from persons who have had dealings with the bank, but the claims against whom we have written off now, it seeming unwise to regard them as worth anything.

There is nothing further, gentlemen, that I wish to say to you, but I shall try to answer any question you may desire to ask. I show you now (lifting a large pile of statements) the result of my investigation—the notes that I have made—and I can assure you that everything that is in this bank has been thoroughly sifted.

Queries.

A STOCKHOLDER: Do you know how the bank stood when the directors voted to double its capital?

Mr. BEST: I am not able to answer that question. I had no connection with the bank until about the 28th of November, ten days after the falure. My only relation previous to that time was that of its largest depositor. The money now here in my own name and in the name of a corporation of which I am president amounts to about $260,000 or $270,000.

Q. Over what period does this indebtedness run?

Mr. BEST: I think some losses of the bank originated in transactions made several months previous to the vote for increasing the stock. But the transactions have been fully described by Col. Needham. They were carried not upon the books of the bank, but in the head of its president and in the memorandum which the cashier himself kept. There is not an entry upon any of the books of the association of $1,262,500 indebtedness which stood in the name of one of its debtors on Nov. 18.

Q. But in the paper which the bank held, in your examination, of course, you had to see the date upon that paper, and you know, consequently, about what dates or for what dates the bank took that paper. Have you any doubt that this bank was insolvent at the time it voted for the increase of its capital stock?

Mr. BEST: That is a question I cannot answer. I have only addressed myself to ascertaining the bank's condition on the 18th of November.

60 Q. That question has not, then, been looked into by you at all?

Mr. BEST: No, sir; I have only addressed myself to the one date, Nov. 18.

ANOTHER STOCKHOLDER: I understand many small stockholders are not able to meet this assessment. What is to become of them?

Mr. BEST: I am at a loss to know how to answer that question. I am not, myself, a stockholder, but should the bank go on I am likely to be. The law prescribes that when an assessment is ordered three months shall be given within which to make payment. If payment shall not be made then the law provides that a notice of thirty days shall be given, and, unless payment be made at the expiration of that time the stock would then be sold. I think, however, there are but few who will not be able to take care of the assessment, and I am hopeful—my hope being based upon such knowledge as I have been able to glean by my labors here—that before any of these small holders could be sold out the affairs of the bank will be in such condition that they can themselves raise the mon y for the assessment without difficulty.

Q. I desire to know whether the cashier has not given a bond, and, if so, for how much; and whether his securties are good?

Mr. BEST: It was intended that the cashier should have given a bond (laughter), and I have reason to believe that a bond was drawn and that the directors were of the opinion that it was executed; but, since the suspension, it has been found that the bond was not executed. The cashier, therefore, cannot be held responsible in any sum whatever on that account.

Q. What provisions are there in the organization of the bank under the original charter or articles of association for an increase in its capital?

Mr. BEST: Perhaps it would be better for the counsel of the bank to answer that question, as I am only a merchant. The articles of association must conform to the law, and the law, I believe, is explicit upon that point. The counsel of the bank, Mr. Stone, could make that matter much plainer than myself.

A stockholder called for the reading of the provision of the articles of association

For increasing the capital stock,

and Mr. Stone, the counsel for the directors, read from the fifth article that the capital should be $250,000, but may be increased, according to the provisions of sec. 5142 of the Revised Statutes, to any sum not exceeding $1,000,000; also sec. 11 of the by-laws, providing that whenever an increase of the stock shall be determined upon the directors shall notify all the stockholders, cause a subscription book to be opened, and, if any stockholder fails to subscribe the directors shall determine what disposition shall be
61 made of the remaining new stock unsubscribed for, and from the directors' records to show that $461,300 of new stock was subscribed for, represented either by certificates of stock actually issued or in receipts, on the surrender of which the parties who took them are entitled to their certificates, and the remaining $38,700 unsubscribed was canceled; that the Comptroller of the Currency was notified and had issued his certificate that the increase of capital stock had been made according to law, which paper was read by Mr. Stone.

The call of the comptroller for an assessment of one hundred per cent. on the capital stock was read, and the following was offered:

Voted, In accordance with the notice of the Comptroller of the Currency, dated Dec. 16, 1881, there be, and hereby is, laid an assessment of one hundred per cent. upon the shareholders of the Pacific National Bank, of Boston, Mass., *pro rata* for the amount of capital stock of said bank held by each shareholder.

Voted, That the board of directors notify each shareholder of said assessment and collect the same forthwith.

J. H. Benton, Jr., called for a stock vote upon the question.

A running discussion ensued upon the expediency of passing the vote. Mr. McIntire, of East Cambridge, holding two shares, said it was a legal question whether the old stockholders could be assessed under the call. He wanted action postponed and a committee ap-

pointed to examine the accounts and report. He wanted to know whether the bank was solvent when he was induced to buy his stock. Later, when the roll was being taken, Mr. McIntire retired from the room, protesting against and declining to take part in the proceedings.

Mr. Hodges also thought the question should be settled whether the old stockholders could be assessed, and favored postponement.

Mr. Dole spoke in the same vein.

Several gentlemen spoke in favor of immediate action, among them J. F. C. Hyde, of Newton; Col. Alden, Capt. Watts, of Maine, and Henry D. Hyde, all agreeing that the only thing to be done was to vote and order the assessment, as the beast means of getting out of the difficulty and saving what they had invested.

In reply to the objections of Messrs. McIntire and Hodges, Mr. Stone stated that the assessment had been ordered by the comptroller under the best authority at Washington, and its legality would have to be settled in the courts.

There were loud calls for "question," and some impatience manifested at the delay.

The stock vote was ordered, and the chair appointed J. H. Benton, Jr., Capt. Watts, Richard Stone, Jr., J. F. C. Hyde, and Dwight Chester a committee to collect and count votes. The ballot proceeded.

62 The assessment ordered.

The question of ordering the one hundred per cent. assessment upon all outstanding stock was carried by a practically unanimous vote.

The total vote represented some $600,000, out of which only about $10,000 was opposed to ordering the assessment.

Directors elected.

The following directors were chosen by a stock vote of 4,727 shares against eighty scattering votes:

Lewis Coleman, of Boston; John Shepard, of Boston; M. Dyer, Jr., of Boston; M. P. Springer, of Newton; J. H. Whitaker, of Malden; Edwin Ray, of Newton; J. H. Sanborn, of Newton, E. M. Fowle, of Newton; George H. March, of Watertown; Arthur Sewall, of Bath; John E. Cassidy, of Boston; John Fallon, of Lawrence.

Present condition of the bank.

The following statement of the bank's condition Jan. 10, 1882, was submitted:

	Par value.	Estimated value.
Cash	$12,743 68	$12,743 68
U. S. bonds to secure circulation	500,000 00	500,000 00
Redemption fund	13,500 00	13,500 00
From banks and bankers	196,049 93	196,049 93
Bonds, mortgages, and stocks	273,500 00	249,000 00

	Par value.	Estimated value.
Pledged to International Trust Company on account of $200,000 loan, not included under any other head	$50,000 00	$50,000 00
Cashier's account and cash items	145,038 90	93,250 49
Receiving teller's items	57,743 02	49,558 22
Notes and bills discounted, etc., including real estate mortgages and stocks carried as loans	4,353,538 40	3,739,656 50
Overdrafts	26,539 55	10,000 00
Revenue stamps	1,000 00	1,000 00
T. C. Weeks, cash	135,000 00	135,000 00
Difference between estimated and par value		714,894 65
	$5,764,653 47	$5,764,653 47
Circulation		450,000 00
63 Deposits and creditors:		
A—Deposits subject to check	$1,060,615 10	
B—Certificates of deposit	1,728,762 53	
C—Due banks and bankers	1,679,189 97	
D—Rediscounts	685,589 61	
E—Unpaid dividends	435 00	
		$5,154,592 21
Stockholders		961,300 00
Recapitulation:		$6,565,892 21
Assets—Estimated value, as above		$5,049,758 82
Liabilities		6,565,892 21
Apparent deficiency		$1,516,133 39
Margin on loans in names of individuals	$25,000 00	
Premium on U. S. bonds about	10,000 00	
Assessment	961,300 00	
Directors' guarantee fund	150,000 00	
Doubtful assets ($714,894.65)	369,833 39	
		$1,516,133 39

The committee appointed to receive, sort, count, and report the votes cast upon the motion to adopt the resolution offered by Richard Stone, Jr., providing for an assessment upon the capital stock, have attended to that duty, and report as follows, viz: Whole number of votes cast, 5,549, representing 5,549 shares, of which 5,494 are in the affirmative and 55 in the negative.

(Signed) J. H. BENTON, JR.
DWIGHT CHESTER.
RICHARD STONE, JR.
SAMUEL WATTS.
JAMES F. C. HYDE.

Adjourned.

J. H. WHITAKER, *Secretary.*

64 EXHIBIT 10.

Record of Directors' Meeting.

SATURDAY, *Nov.* 19, 1881.

Present: Messrs. Benyon, Coleman, Sewall, Sanborn, Springer, Shepard, March, Whitaker and Fowle.

Voted, That Col. Needham be requested to make a thorough examination of the bank, and report to the directors.

Voted, That Messrs. Coleman, Shepard, and Whitaker be an executive committee to aid the bank examiner in the examination of the security of the bank, with full power.

Attest:

J. M. PETTENGILL, *Cashier.*

EXHIBIT 11.

Letter, Bank Examiner to Comptroller, Nov. 26, 1881.

OFFICE OF DANIEL NEEDHAM, NATIONAL BANK EXAMINER,
45 MILK STREET, BOSTON, *Nov.* 26, 1881.

SIR: I have made a statement to the directors of the Pacific National Bank of Boston this afternoon. All the directors but one were present.

They have taken the matter of my statement under consideration, and are anxious for a delay of a week, and have telegraphed to the comptroller asking delay in his final decision.

My report to the Department will be made up at the earliest moment, but I fear it cannot be completed before Monday evening or Tuesday forenoon of next week.

I do not think my investigation of yesterday and to-day has made the matter more hopeful. The directors, however, are very hopeful, and I hope they may have full opportunity for deliberation.

I was in error in my statement that Mr. Weeks was not using checks of the Pacific one year ago, or at the time of my last examination. I made the statement from the testimony of Benyon, the president, which was confirmed by Weeks; they, however, stated from memory. I find by examination of the stub-books that Weeks was using Pacific National Bank checks at the time of my last examination and for some two months previously, but in comparatively small amounts; and the checks which were in at the time of my
examination were all apparently regular clearing checks and
65 passed regularly and in amount not sufficient to attract any
attention. At that time Mr. Weeks was unquestionably solvent, and continued so for several months afterwards; and the first clearing check which came back to the Pacific was the 9th of August, 1881, for the sum of ten thousand dollars.

I shall give full details of transactions and minute account of the condition of the bank in my report.

Very respectfully, y'r ob't s'v't,

DANIEL NEEDHAM.

Hon. John Jay Knox, Comptroller of the Currency, Washington, D. C.

EXHIBIT 12.

Report of Bank Examiner to Comptroller, March 11, 1882.

No. of bank, 2,373.

Examiner's report of the condition of the Pacific "National Bank," located at Boston, in the county of Suffolk, State of Massachusetts, at 9 o'clock a. m., March 11th, 1882.

Lewis Coleman, president; E. C. Whitney, cashier.

Resources:

	Dollars.	Cts.
1. Notes and bills discounted	$2,436,962	64
2. Overdrafts	2,184	89
3. U. S. bonds to secure circulation	500,000	
4. U. S. bonds to secure deposits		
5. U. S. bonds on hand		
6. Other stocks, bonds, and mortgages	664,672	46
Temporary or demand loan	702,854	06
7. Due from app'd reserve agents, viz.	845,202	12
Suspense account due on assessment	354,300	
8. Due from other national banks	36,545	74
9. Due from State banks and bankers		
10. Banking house		
11. Other real estate	335,041	88
12. Furniture and fixtures		
13. Current expenses		
66 14. Taxes paid		
15. Premiums paid		
Revenue stamps	961	93
16. Checks and other cash items	91,141	80
17. Exch's for C. H., includ'g gold ch'ks		
18. Bills of other national banks		
19. Bills of State banks		
20. Fractional currency (includi'g nickles)		
21. Specie, viz.		
Silver coin	3,049	68
Gold coin		
Rec. teller	3,876	62
22. Legal-tender notes		
23. U. S. cert's dep. for legal tenders		
24. 5 p. c. red'n fund with Treas. U. S.	22,500	
25. Other funds with Treas. U. S.		
Cash		
Total	5,999,293	82

Liabilities:

		Dollars.	Cts.
1.	Capital stock paid in	354,300	
	Do. assessment	607,000	
2.	Surplus fund	300,000	
3.	Discount		
4.	Exchange		
5.	Interest		
6.	Premiums		
7.	Profit and loss	18,291	44
	Suspense Poland	9,800	
8.	Circulation received $450,000		
	On hand and returned 43,400		
		406,600	
9.	State bank circulation outstanding		
	Suspense certificates	367,483	34
	10. Dividends unpaid	435	
67	11. Individual deposits, viz:		
	Subject to check	986,380	67
	Demand certif's	1,108,458	28
	Time certificates		
	Certified checks		
	Cashier's checks		
12.	United States deposits		
13.	Deposits of U. S. disbursing officers		
14.	Due to national banks	929,817	51
15.	Due to State banks and bankers		
16.	Notes and bills rediscounted	382,895	99
17.	Bills payable	509,701	32
	Cash over	18,130	27
	Total	$5,999,293	82

Dividends and Surplus.

(Section 5199 of the Revised Statutes of the U. S.)

Date of last dividend, July 1, '81; amount, $15,000; carried to surplus, $14,239.48.

Loans and Discounts.

On paper with two or more individual or firm names	$1,733,836	98
On single-name paper (one person or firm) without other security	162,770	85
On mortgages and other real estate security		
On U. S. bonds, payable on demand		
On other stocks, bonds, etc., payable on demand	762,708	88
All other loans	480,499	99
Included in the above are—		
Bad debts, as defined in section 5204 of the Revised Statutes of the U. S.	3,612	84
Other suspended and overdue paper	777,619	84
Liabilities of directors (individual and firm) as payers	101,607	33

68 Loans exceeding the limit prescribed by section 5200 of the Revised Statutes of the U. S., viz:

Consist of two items, to wit:

John Steward	$100,000
H. M. Jewett	100,000

General Remarks.

Bills payable consist of memoranda given to the Central National Bank, to wit:

$19,701.32, payable six months from January 1st, 1882.

$400,000, payable one year from January 1st, 1882, at four per cent. interest.

$70,000 at the Boston Five-Cent Savings Bank, at five per cent. interest, with bonds as collateral, payable at the option of the bank. The checks drawn on the Eliot and held by the Central National, aggregating three hundred and fifty thousand dollars, upon one of which T. C. Weeks has paid twenty-five thousand dollars, and which were treated by me in a former report as doubtful, and which I had not expected to come to the bank from the Central National, were accepted through Mr. Weeks, in his settlement, as is fully explained in my correspondence with the directors, a copy of which is embraced in this report.

Bank accounts all verified in accordance with the requirements of the Department.

Cash items consist of the following, to wit:

Fractional bill and currency		1	60
Memorandum for interest due from Edward Crane *for interest*		2,797	08
Memorandum for check, W. J. Best		2,500	
Memorandum checks, E. M. Fowle		2,875	03
Memorandum check, F. E. Bryant		241	73
Cash check, Lewis Coleman		19,300	
Cash check, Shepard, Norwell & Co.		19,000	
Cash check, Lewis Coleman		968	50
69 Check on Pacific Nat'l Bank, W. S. Denney, treas.		7,000	
" good on opening, J. V. Fletcher & Co.		10,000	
Check, good on opening, C. E. Morrison		5,000	
" Cash, Lewis Coleman		1,000	
" " Do.		100	
" " Do.		5,000	
Cash paid on W. P. H. note, Wm. P. Hunt		5,109	17
Bills		245	
Change		3	69
		91,141	80

Memorandum checks are said by the president to be good.

Cash paid on W. P. Hunt's note, 5,109.17, will be carried to loan account, the note having been endorsed by the Pacific National Bank, and the party holding the same having been paid by direction of the president, Mr. Coleman. Check on Pacific by W. S. Denney, treasurer, is drawn against a balance on the books of this bank.

Other stocks, bonds, and mortgages consist of the following items:

			Date of deed.
Nantasket Company bonds		113,000	
Framingham & Lowell R. R. bonds		4,000	
Brown, Riley & Co.		64,000	
Nantasket Co. stock		2,000	
Five Cent Savings Bank { C., B. & Q. bonds.		100,000	
Five Cent Savings Bank { Nantasket "		12,000	
Home Savings Bank, Marcus note secured by mortgage		22,759 17	Jan. 25, '81.
Nathaniel M. Jewett, mortgage of real estate in Boston		100,000	Oct. 7, '81.
Thos. Lord & H. G. Parker, trustee note secured by mortg. of real estate		58,450 52	Nov. 17, '81.
E. M. Fowle, trustee mortgage of land	4,500		
And houses at O. S.	1,537 17	6,037 77	May 28, '79.
Mortgage of German Lutheran church		30,000	M'c'h 8, '82.
70 Ellenville Gas Light Co. bond, 500 bond		400	
Lebanon Spring R. R. Co.'s bond (rece'v. cert'f)		15,000	
		527,647 46	
Clark Insulated Wire Co., 1,401 sh's, par value $25		35,025	
Danville & Ohio R. R. bonds		3,000	
Utah & Pleasant Valley R. R.		99,000	
		664,672 46	

The mortgages hereinabove named have been taken in accordance with the provisions of law to protect the bank against loss by paper held by the bank.

Upon these several securities, if a sale should be forced, there would be a very considerable loss. To this fact in my letter, a copy of which is herein given as a part of this report, I called especial attention to this matter, as I have also to the large sources for loss open in every asset account, and to this the directors in their reply, a copy of which is also given, accept the responsibility.

Suspense account, 367,483.34, consists of thirty-seven certificates of deposit, which the counsel of the bank certifies the bank has a legal defence against, the payment of no valuable consideration having been received therefor and practically in the hands of the original parties to whom they were issued.

Other real estate consists of the following items:

	Amount.	Date of Deed.
Deed of land in East Boston	4,500	April 4th, 1881.
" " Newton	10,000	Nov. 8th, 1881.
" " from A. A. Marcus	10,000	Oct 21, 1881.
" " Taunton Savings B'k	7,500	Deed to come.
Real estate, Commonwealth avenue	137,500	M'ch 11, 1882.
Real estate Mystic avenue	14,276 97	Feb. 20, 1878.
" Winthrop	2,164 91	Sept. 1st, 1881.
" Whitney property	15,000	Deed in transit.
" Wm. Bassett	1,200	Ocean Spray. July 25, '79.
Real estate, Camden & Tremont Sts.	14,500	Dec. 6, 1881.
71 Real estate, Albion, Cliftondale, Purchase Sts.	18,300	Jan. 20, M'ch 24, '81.
Real estate, Chas. Hurlburt, Dale St.	5,100	Apr. 9, 1880.
Real estate, Hotel St. Leonard	45,000	M'ch 7, 1882.
" " Commonwealth Hotel,	50,000	" 11, 1882.
	335,041 88	

This real estate has all been taken in accordance with the provisions of law to protect the bank against loss by paper taken by the bank.

It is impossible for me to give a valuation to these items. The directors are confident that upon the real estate there will be but little if any loss.

Paper classified "Bad debts," 3,612.84, consists of several items which should be charged off.

Paper classified "Other suspended and overdue" consists of a large number of items, sixty thousand dollars of which has been overdue the second time. About this paper, as well as about the other paper of the bank, I have little knowledge except that which I obtain from members of the board.

As will be seen by my letter to the board of directors, which is made a part of this report, I have called especial attention to each classification of assets upon which the bank is to rely for rehabilitation, and, as will be seen by the reply of the board of directors, which reply is also made a part of this report, the directors accept the responsibility of again opening the doors of the bank for business.

Before concluding my examination of this bank I addressed a letter to the board of directors, of which the following is a copy:

To the directors of the Pacific National Bank:

GENTLEMEN: You are in session to consider the most important matter connected with your varied, arduous, and continuous labor for the last four months, the summing up of your work and its re-

sults. Upon your action to-day must rest largely the reopening of the bank, or the passing of its assets into the hands of a receiver.

You have worked assiduously and continuously, some of you, men of very large and active business, having entirely neglected your own personal matters and given your whole time to the affairs of the bank.

To-day the question is put to you, Is the bank now solvent?
72 Can it be rehabilitated and placed with the other solvent banking institutions of Boston and enter safely into the legitimate competition for a legitimate business and have the result crowned with success?

You have directly or indirectly scanned every piece of paper and every item of bond, mortgage, and real estate which enters into the great total of the bank's assets. You have renewed much of the overdue paper, taken new or additional security, and examined the large volume of "overdue" paper, item by item. You have in almost every instance had the debtor in your presence, conversed with him freely, interrogated him with regard to his means, and reached a conclusion, as I understand, in every case which has been made a matter of record.

Personally, I have called your attention many times during the last four months to the enormous acknowledged liabilities of the bank, and again, in this closing communication, I ask you to weigh fully the certainty of the liabilities and the uncertainty of assets, which depend upon human life, a varied market, and a healthy and successful business future. I must remind you of the large item of paper classified "overdue," aggregating seven hundred and eighty-one thousand dollars, some sixty-eight thousand dollars of which has been of the renewed paper previously overdue, and now overdue for the second time. I must remind you of the "other stocks, bonds, and mortgages," aggregating more than six hundred thousand dollars, most of which could not find a ready market at prices very considerably below the individual and aggregate values at which they stand in the bank's assets.

I must remind you of the time and demand loan, constituting the great bulk of assets—the backbone of the bank—out of which you are to largely meet the liabilities which you assume of payments on call, and in four, eight, and twelve months, from January 1st, 1882.

I must remind you of the real estate depending for its disposition upon a variable market.

I must remind you that some three hundred and fifty-four thousand three hundred dollars of the assessment to make good lost capital has not yet been paid in.

I must also call to mind the swelling of the liabilities some three hundred and twenty-five thousand dollars by the recognition of the two checks held by the Central National Bank, to wit, one of two hundred thousand dollars and one of one hundred and fifty thousand, drawn Sept. 6th and 8th, 1881, on the Eliot National Bank, and which did not appear upon the books of the Pacific National charged in the Eliot National Bank account.

I am aware that the outstanding checks are *prima facie* evidence

of the indebtedness of the bank, and I am also aware that they were grouped with checks recognized in all hands as *bona fide* in-
73 debtedness of the Pacific National in a final adjustment of the unsecured checks held by the Pacific National against T. C. Weeks, who, otherwise, by this settlement, seemed powerless to contribute anything in liquidation of his debt.

With this review of the principal features of the bank's assets and this reminder of the weak and doubtful features of the condition of the bank I ask you careful and mature action, keeping constantly in mind your duties to the creditors and stockholders of the bank and the great public, who will, of right, discuss the result of your action.

Very respectfully, DANIEL NEEDHAM,
Nat'l Bank Examiner.

To which the directors returned a reply, of which the following is a copy:

BOSTON, *March 11th*, 1882.

To Daniel Needham, Esq., national bank examiner.

SIR: Your letter of this date has been read and carefully considered by the board of directors of the bank. We have, as you say, either directly or indirectly, scrutinized every item of assets held by the bank. We have, directly or indirectly, met most of the debtors of this bank face to face, and have formed an opinion of the character and responsibility of the men. We have weighed carefully the great aggregate of liabilities, and are impressed with the responsibility we assume when we decide that the doors of the bank can again be opened for business and its obligations met as they have been arranged with a very large proportion of the creditors. It has been by careful consideration that the liability of the bank on the two checks held by the Central National Bank, aggregating three hundred and fifty thousand dollars, upon which T. C. Weeks had paid twenty-five thousand dollars, have been recognized in the settlement of T. C. Weeks as a part of the seven hundred and five thousand dollars which he has paid on his unsecured checks held by the bank, the settlement being the best that could be made, and removing from the bank a liability hereafter to be contested in the courts, involving large expense and uncertain results at the best.

In view of all the facts in the case, and of our most careful and protracted examinations, we decide that the assets of the bank are fully equal to its liabilities, and are not only willing but desirous of taking the responsibility which the reopening of the bank's doors for business imposes upon us.

In behalf of the board:

Respectfully, LEWIS COLEMAN, *Pres't.*
DANIEL NEEDHAM,
Examiner.

To the Comptroller of the Currency, Washington, D. C.

74 EXHIBIT 13.

Letter, W. J. Best to Comptroller, March 14, 1882.

WASHINGTON, D. C., *March* 13, 1882.

Hon. John Jay Knox, comptroller, etc.:

SIR: Referring to our interview of yesterday, concerning the Pacific National Bank, I beg to submit a brief statement as to certain assets, of the value of which you desired more particular information than had been furnished by Col. Needham, national bank examiner.

Under the head of "other stocks and bonds and mortgages," the bank holds—

Nantasket company bonds	125,000
Nantasket company stock	64,000
Utah & P. V. R. R. bonds	99,000

These items aggregate $228,000, and are now worth only about 75 % of their face value; but, as an asset, I feel justified in saying that they are worth par. The transactions through which they came into the bank are well known, and I have excellent reasons for stating that the persons who placed them in the bank can be compelled and will shortly find it to their interest to take them out again at the cost price of $288,000.

The bonds of the Framingham and Lowell R. R., the Danville & Ohio River R. R., the C., B. & Q. R. R., and the Lebanon Springs R. R. receiver's certificates, together amounting to $122,000, are good, interest-paying securities, which could readily be sold at 85 %, even in the present depressed state of all railroad stocks. They cost the bank par, and, in the opinion of persons well informed, will ere long sell at that price, or even higher.

Of the Clark Insulated Wire Co. stock, $35,025, I know but little. A gentleman largely interested in the company informs me that its stock has a prospective value far beyond the sum named. Mr. Coleman and, I think, others connected with the bank, own some of this stock. That held by the bank was taken in part settlement of the indebtedness of an insolvent corporation.

75 The "bonds and mortgages" foot up $217,247.46, and on this large sum the loss will probably not exceed $1,500, which may be sustained on the $6,037.77 mortgage in the name of E. M. Fowle, trustee. The item of $22,759.17 will be offset by an equal amount in our own demand certificates, now held by the Home Savings Bank. This settlement was arranged previous to my leaving Boston last Saturday. The rest of the list are amply secured, and will doubtless be converted into cash or first-class stocks within a few months.

Of the "real estate" upwards of $60,000 will be exchanged for demand certificates that were issued for properties taken from the Home Savings Bank, the Taunton Savings Bank, A. A. Marcus, and others. The Commonwealth avenue lands, the Commonwealth Hotel, and the estate at Camden and Tremont Sts., aggregating $202,000,

are not rated at their full market value. I feel quite certain that they will realize the sum stated, and that they can be disposed of during the spring or early summer. The remainder of the real estate amounts to $71,764.91, on which I anticipate a loss of about $25,000.

As to the "notes and bills discounted," I would say that each piece of paper and everything in the shape of collateral have been gone over several times by the directors, and that they did not hesitate to assume the responsibility put upon them by Col. Needham in the letter which he addressed them on the 11th inst. and made a part of his report. The large amount of "past-due" paper could at any moment be almost wholly blotted out by renewals, but I have earnestly advised against this course, for the reason that the makers and indorsers are not entitled to discounts and should be compelled to pay up at once. A large portion, probably about four-fifths, is secured by collateral or indorsements sufficient to cover the whole amount due the bank.

A fair approximation of the loss upon notes and bills discounted, including the "past due," would be from $150,000 to $250,000. It is probable that the minimum sum named will more than cover the actual loss. Of course careful and intelligent, and at the same time energetic, management is required in dealing with this por-
76 tion of the assets, and you may rest assured that nothing will be left undone to insure the most satisfactory results.

The "surplus fund" and "profit and loss" amount to $318,291.44, and this sum the directors believe ample to cover every possible loss in realizing upon the estate. In this opinion I fully concur and will do all in my power to make it good.

As evidence of what may be accomplished by good management the tables given below speak for themselves. The work already done entitles the directors to the confidence of the Department and the respect of every one in any way interested in the bank. Beside reducing the liabilities nearly $1,200,000 the assets that remain have been strengthened to the extent of at least $500,000; that is to say, mortgages, stocks, and bonds in the amount named have been brought into the bank as collateral where none was held before.

When the bank suspended it had less than $13,000 in cash; now it has nearly $1,000,000, and the amount is steadily increasing.

The surplus that is shown in the bank examiner's report of the condition of the bank represents mainly properties of various kinds that have been secured since Nov. 18, 1881.

In the settlement with T. C. Weeks the bank released of its claims against him $857,500. Notwithstanding the release he declares that he can and will yet pay to the last penny, and there are many conservative bankers, capitalists, and merchants in Boston who believe that he will do so.

Once before he failed, got his discharge in bankruptcy, resumed business, made money, and paid his old debts in full. All who know him say he is honest, and he has so impressed me. He is a strange character—bright, clever, and a bold operator; a man whom it is difficult to keep down, much less suppress, and who, I believe, would

rather have men say of him that he paid his debts than that he was worth millions. From all that I know of him I think there is a fair prospect that he will ultimately pay a portion, perhaps the whole, of his indebtedness to the bank.

I shall lay a copy of this letter before the directors on my return to Boston, and will have them indorse it or send you a similar letter over their individual signatures; meantime you may treat it
77 as fully authorized under the general powers conferred upon me by the vote passed at their meeting last Saturday, a certified copy of which I herewith file.

I have the honor to remain, etc., respectfully, your ob't serv't,

W. J. BEST.

PACIFIC NATIONAL BANK,
BOSTON, *March* 21, 1832.

According to our best knowledge and belief, we think the within statement is correct.

LEWIS COLEMAN.
JOHN SHEPARD.
GEORGE H. FROST.
JAS. H. WHITAKER.
GEO. N. MARSH.
MICAH DYER, JR.
M. P. SPRINGER.
SAMUEL WATTS.
JOHN FALLON.

Nov. 18, 1881:		
Subject to check		1,062,540 10
Demand certificates		1,728,762 53
Banks and bankers:		
General	1,815,936 36	
Howard Nat'l Bank	70,000 00	
5 c. Savings Bank	90,000 00	
		$1,975,936 36
Rediscounts		685,589 61
		$5,452,828 60
March 11, 1882:		
Subject to check	986,380 67	
Demand certificates	1,475,941 62	
Banks and bankers	929,817 51	
Bills payable:		
Cent. Nat'l Bank 419,701 32		
5 c. Savings Bank 90,000 00	509,701 32	
78 Rediscounts	382,895 99	
		4,284,737 11
Actual reduction in liabilities		1,168,091 49
Liabilities as above		4,284,737 11

Extensions to March 11	2,648,267 00	
Do. likely to be secured before the bank resumes	153,733 00	
Demand certificates carried to suspense ac. by direction of Col. Needham	367,483 00	
		3,167,483 00
Balance		1,117,254 11
Deduct rediscounts, which it is believed will be paid at maturity		382,895 99
Amount to be provided on resumption		$734,358 12
Cash actually available		954,259 39
Surplus in cash, after paying every obligation not extended or contested		219,901 77

EXHIBIT 14.

PACIFIC NATIONAL BANK,
105 DEVONSHIRE STREET, BOSTON,
January 2nd, 1882.

We, the undersigned, creditors of the Pacific National Bank of Boston, in consideration of the embarrassed condition of said bank and the agreements of the other parties hereto herein contained, do hereby, for ourselves and our heirs, executors and administrators, respectfully covenant and agree with said Pacific National Bank of Boston, its successors and assigns, that we will and hereby do extend the time of payment of our several claims as follows, to wit: one-third thereof to be paid in four months from January 1st, 1882; one-third thereof to be paid in eight months from January 1st, 1882; one-third thereof to be paid in twelve months from
79 January 1st, 1882; interest on each instalment to be paid therewith at the rate of four per cent. per annum; the bank to have the right to anticipate any or all of said instalments.

In witness whereof we have hereto set our hands and our common seal, adopted for this purpose only, this second day of January, one thousand eight hundred and eighty-two.

EXHIBIT 15.

THE PACIFIC NATIONAL BANK,
BOSTON, *March* 16, 1882.

To our depositors:

By vote of the directors and the approval of the Comptroller of the Currency the bank will reopen for business on Saturday, the 18th. Every effort has been made to put the bank again into a sound and solvent condition, and the stockholders have been called upon to pay an assessment of 100 per cent. on their stock, thus making the depositors' balances secure and available. The bank will be run on

strict business principles and in the interest of its customers and stockholders, and, while thanking you for past favors, we solicit your confidence and support for the future.

LEWIS COLEMAN, *President.*
E. C. WHITNEY, *Cashier.*

EXHIBIT 16.

(2373.)

Lewis Coleman, president. E. C. Whitney, cashier.

THE PACIFIC NATIONAL BANK,
BOSTON, *April* 21, 1882.

No. 105 Devonshire St., directly opposite post office.

——— ———,
——— ———:

In December last a notice was received from the Comptroller of the Currency, of which the following is a copy:

80 TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, *Dec.* 16, 1881.

To the Pacific National Bank, of Boston, Massachusetts:

The entire capital stock of the Pacific National Bank, of Boston, Massachusetts, amounting to nine hundred and sixty-one thousand three hundred ($961,300) dollars, having been lost, notice is hereby given to said bank, under the provisions of section 5205 of the Revised Statutes of the United States, to pay the deficiency in its capital stock by an assessment of one hundred (100) per cent. upon its shareholders, *pro rata*, for the amount of capital stock held by each, and that, if such deficiency shall not be paid and said bank shall refuse to go into liquidation, as provided by law, for three months after this notice shall have been received by it, a receiver may be appointed to close up the business of the association, according to the provisions of section 5234 of the Revised Statutes of the United States.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the Treasury Department, in the city of Washington and District of Columbia, this sixteenth day of December, A. D. 1881.

[SEAL.] JNO. JAY KNOX,
Comptroller of the Currency.

In pursuance of the foregoing notice the following vote was passed at the annual meeting of the stockholders held Jan. 10, 1882:

Voted, In accordance with the notice of the Comptroller of the Currency, dated Dec. 16, 1881, there be, and hereby is, laid an assessment of 100 per cent. upon the shareholders of the Pacific National Bank, of Boston, Mass., *pro rata*, for the amount of capital stock of said bank held by each shareholder.

Voted, That the board of directors notify each shareholder of said assessment and collect the same forthwith.

More than three months having elapsed since you were notified of said assessment, and the same not having been paid, you are hereby notified that unless said assessment shall be paid on or before April 28, 1882, notice of the sale of your stock at public auction will be published in a newspaper of the city of Boston and posted in the office of this bank, and your stock will be sold according to law on Wednesday, the thirty-first (31) day of May, 1882.

E. C. WHITNEY, *Cashier.*

81 EXHIBIT 17.

Lewis Coleman, president.

PACIFIC NATIONAL BANK,
105 DEVONSHIRE STREET,
BOSTON, *Jan.* 2, 1882.

A meeting of the directors of the Pacific National Bank was held at their rooms this day, when the following votes were adopted unanimously:

"Voted, That in the opinion of said directors an assessment of 100 per cent. upon the stock of said association will place it upon a sound financial basis, provided depositors and creditors shall agree to a reasonable extension of time for the payment of their several claims.

"Voted, That depositors and creditors be requested to sign the following agreement, and return the same to the bank on or before the 10th inst."

The agreement (Exhibit 14) referred to in the last vote is herewith enclosed. It is very important that you sign and return it to me as soon as possible. The assets of the bank consist almost wholly of discounted paper, which cannot be realized upon immediately without great sacrifice. It would, therefore, be unwise to attempt to resume at an early date unless the creditors generally agree to the extension now asked. Waiting your reply,

Respectfully, &c., LEWIS COLEMAN, *Pres't.*

Deposition of Richard Stone.

BOSTON, *Oct.* 17, 1884.

Direct examination by A. P. GOULD, Esq., of counsel for complainant:

Int. 1. Please state your name, residence, and occupation.

Ans. Richard Stone; Boston, Mass.; counsellor-at-law.

Int. 2. Please state whether you were counsel for the Pacific National Bank during its suspension, from Nov. 18, 1881, to and including the time of the annual meeting, Jan. 10, 1882.

Ans. I was counsel for the Pacific National Bank in Boston from a few days after its suspension in November, 1885, to and including

the annual meeting, Jan. 10, 1882, and for some time afterwards.

82 Int. 3. Were you present at the meeting of the board of directors December, 1881, at which the vote was passed canceling $38,700 of the stock which had been voted Sept. 13, 1881?

Ans. I was present at a meeting of the board of directors at which a vote was passed, to which I suppose you refer in your question. I do not remember the exact date. I remember that I drafted the vote, and that it was passed while I was present.

Int. 4. Have you a copy of that vote now in your hands incorporated into the statement of facts in this case?

Ans. Yes.

Int. 5. Please state whether prior to the passage of that vote, as a representative of the bank, you had an interview with Comptroller Knox at Washington in respect to the amount of capital stock of the bank, and, if so, whether you then informed him, if he did not know it before that a vote had been passed in September previous, increasing the capital to $1,000,000, and that the full amount of the increase had not been prescribed or paid in, and state the facts about the interview.

(Objected to.)

Ans. At the request of the directors of the bank I went to Washington in December, 1881, before the vote referred to in the question was passed, and had an interview with Comptroller Knox in relation to the affairs of the bank. Mr. March, one of the directors, and Mr. William J. Best were present and took part in the conversation. The fact that a vote had been passed in September previous to increase the capital to a million dollars, and that the full amount of that increase had not, in fact, been subscribed for or paid in when the bank suspended in November, was talked over in that conversation. Whether I mentioned it or one of the gentlemen present I cannot state. I discussed with the comptroller the question as to what should be done in view of those facts, and as to what should be regarded as the capital of the bank, and the conclusion of the matter was that such a vote as this of Dec. 13, 1881, should be passed by the directors; that the comptroller should then be notified that the capital had been increased by the sum which had in fact been paid in, and that he should thereupon issue his certificate of increase to the bank to that amount. He expressed his approval of that course.

83 Int. 6. Was the vote outlined during that interview, or the substance of it agreed to in your interview with the comptroller?

Ans. The substance of it was approved by the comptroller, but no draft of it was made at the time, nor until subsequently.

Int. 7. Did you report to the board of directors your interview with the comptroller, and inform them that the course which was adopted was approved by him, before the vote was passed?

Ans. I did.

(The evidence given by Mr. Stone is objected to by defendant's counsel as incompetent, and it is agreed that this objection is to have the same effect as if entered in connection with each question.)

Cross-examination by A. A. RANNEY, Esq., of counsel for defendant:

Cross-int. 8. When you went in to act as attorney of the bank and examined about the increase of stock did you find a subscription paper or papers, or whether there had been one opened and signed, or how the matter then stood?

(Objected to as calling for secondary evidence.)

Ans. I found that there had not been any subscription paper opened or signed. I was informed by the cashier, whom I questioned on the subject, that he first sent out notices to the stockholders, notifying them of the vote to increase and of their right to take new stock, share for share, and stating the time within which payment must be made; that subsequently, as parties came in and notified him that they would take new stock, he received payment from them and gave them receipts therefor, telling them orally that he would fill out certificates of stock as he had time, and they could call later and get them; that he entered the names of such stockholders and the amounts paid by them on a small book which he kept for that purpose, and from that book he told me how much had been paid in in all. That I understood was the whole method of the transaction.

(Complainant objects to the declarations of the cashier and to all hearsay evidence in the answer.)

RICHARD STONE.

Attest: JOHN G. STETSON, *Examiner.*

84 *Evidence for Defendant, taken Pursuant to the Sixty-Seventh Rule of the Supreme Court of the United States, in Equity, as amended, before me, John G. Stetson, Examiner.*

Present: A. P. Gould, Esq., and Benjamin N. Johnson, Esq., of counsel for complainant; A. A. Ranney, Esq., of counsel for defendant.

Deposition of Linus M. Price.

BOSTON, *Oct.* 17, 1884.

Direct examination by A. A. RANNEY, Esq., of counsel for defendant:

Int. 1. Please state your name and if you are the defendant in this cause.

Ans. Linus M. Price; I am.

Int. 2. Please state what was the amount of paper which, at the time of resumption, the bank had out under rediscount.

Ans. $354,321.13.

Int. 3. State what the amount of rediscounted paper was at the time of the final failure, on May 20, 1882.

Ans. $559,481.85.

Int. 4. Please state what you mean by rediscounted paper.

Ans. I mean paper which the bank owned or discounted and sold with the bank's indorsement.

Int. 5. Was this paper passed by the Pacific Bank to individuals or to other banks?

Ans. Generally to other banks.

Int. 6. I understand you to mean, as an illustration, that the bank made loans to customers, taking paper in a discount loan, and they got the same notes discounted at other banks with the indorsement of the Pacific Bank; am I correct?

85 Ans. You are.

Int. 7. Have all of those rediscounted notes or papers been paid? If not, what proportion of them are still unpaid?

Ans. Seventy-five thousand dollars ($75,000) are still unpaid.

Int. 8. Have they matured since you were appointed receiver, or were they notes on time which have not yet expired?

Ans. They have all matured, and a part of them have been renewed from time to time with the consent of the receiver, so that they remain a liability of the bank.

Int. 9. Can you judge whether they are good or bad, and what proportion of them are bad?

Ans. My last estimate was that $60,000 of this rediscounted paper would never be paid.

Int. 10. Will you please state whether the assessment laid on Jan. 10, 1882, had all been paid in when the bank resumed? If not, what amount had been paid in and what remained unpaid?

Ans. The assessment was not all paid in before the resumption of March 18, 1882. The amount paid in before March 18 was $643,700. The amount paid after resumption was $99,100.

Int. 11. Had the assessments been all paid in when the bank finally failed, May 20, 1882?

Ans. They had not; $218,500 of the assessment of $961,300 had not been paid in May 20, 1882.

Int. 12. When the bank resumed what was done with the amount of the assessment paid in?

Ans. It went into the general business of the bank, the general assets of the bank.

Int. 13. Was there any distinction made as to that money and the way it was treated from the other assets of the bank?

Ans. No.

Int. 14. The moneys of the bank which they had when they resumed and the money which they received afterwards were paid out how?

Ans. It was used to pay demands, expenses, interest.

Int. 15. State whether the first instalment of the extended paper which fell due in May, 1882, was all paid. I refer to the extension under paper dated Jan. 2, 1882.

86 Ans. A large part was paid. In a number of cases the amount due on extension was left on deposit at the request of the bank officers, and in some cases depositors who were dealing with the bank daily paid no attention to the extension.

Int. 16. Since you have been receiver have you been able to col-

lect any of the voluntary assessment which remained unpaid when you took charge of the bank?

Ans. I have not.

Int. 17. Will you state from the stock ledger what transfers of shares of the capital stock of the bank were made after the bank resumed and before the final failure?

Ans. I will furnish such statement, to be marked "Exhibit Capital Stock Transfer Statement."

Int. 18. Will you state in an exhibit to be annexed the amount of deposits in the Pacific National Bank made by other banks between March 18, 1882, and May 20, 1882?

Ans. I will, in statement to be marked "Exhibit Statement of Deposits made by Banks," etc.

Int. 19. On May 20, 1882, when you took possession of the assets of the bank, had all the depositors named or stated in the last exhibit been paid the amount due them when the bank finally failed?

Ans. They had not.

Int. 20. Will you state whether after the bank resumed, and before May 20, 1882, the bank had paid the expenses incident to the business since the first suspension and during the period of resumption?

Ans. The bank paid incidental expenses between March 18 and May 20, 1882, of $5,777.93. How much was paid for such expenses before March 18, 1882, I am unable to state, except as to the amount paid Mr. Best for his services, which was $12,000, of which $5,000 was in cash and $7,000 in stock of the Pacific National Bank.

Int. 21. Do you know whether Daniel Needham was paid anything for his services by the bank?

Ans. He was, but I don't recall the amount. Upon reflection I wish to say that it may have been $5,500 that was paid Mr. Best in cash, instead of $5,000, as I stated in answer to the last question.

87 Int. 22. Can you state the amount of the indebtedness which was not extended under the agreement of Jan. 2, 1882?

Ans. The total amount of indebtedness to individual depositors and banks March 18, 1882, was $3,261,976.75. The aggregate of extensions found by me in the bank is $2,104,931.26, leaving $1,157,045.49 apparently not extended.

Int. 23. State whether, after the bank resumed business, March, 1882, it paid any creditors in full who did not extend.

Ans. Some were paid in full.

Int. 24. Can you determine how much, or about how much, was paid out to creditors who did not extend after the bank resumed?

Ans. I cannot.

Cross-examination by A. P. GOULD, Esq., of counsel for complainant:

Cross-int. 25. Was not a large portion of the paper mentioned in your answer to Int. 2, amounting to $354,321.13, renewed between March 18 and May 20, 1882?

Ans. A large amount was doubtless renewed.

Cross-int. 26. You mean that they were renewals of paper which the bank had out under rediscount before March 18, do you not?

Ans. I mean to say that a large part of the rediscounts represented by the figures I have given, $354,321.13, was unpaid at maturity, taken up by the Pacific Bank, and renewed by the makers; but I do not mean to say that the identical paper, or paper made by the same parties, was again rediscounted at the banks that had previously held the paper; in other words, when they were renewals the new paper was put in different banks.

(Answer objected to by counsel for complainant as not responsive.)

Cross-int. 27. Were there any losses on new loans made by the Pacific Bank between March 18 and May 20, 1882?

Ans. There were none.

Cross-int. 28. Please state, if you have it before you, the exact amount of the indebtedness of the bank when you took possession.

Ans. The amount was $2,470,356.76.

Cross-int. 29. You say in answer to Int. 19 that all the de-
88 posits stated in your exhibit annexed to your answer to Int. 18 had not been paid May 20, 1882. Do you know what proportion of them had been paid?

Ans. I referred in that answer to the balance due to banks March 18, 1882, and not to the deposits made later by banks. As to the latter, I have no present information. I wish to make a correction in my answer to Int. 19. I understood the question then asked me to refer to balances due to banks at the time of resumption, March 18, 1882, and not to those mentioned in the schedule annexed to Int. 18.

Adjourned.

OCT. 18, 1884.

Cross-int. 30. Are you able to state what parties hold the $75,000 of unpaid notes which were rediscounted?

Ans. My books will show; I cannot state without referring to them.

Cross-int. 31. Can you state what parties held those notes, March 18, 1882, or the notes which were given in renewal of the $75,000 unpaid?

Ans. I cannot.

Cross-int. 32. Please state the amount of cash or cash items that was in the bank March 18, 1882, as near as you can.

Ans. I find on book entitled state of the bank No. 2 that the cash and cash items and balances due from other banks on March 18, 1882, aggregated $859,767.35.

(Competency of the testimony which gives the contents of the books of the bank is not objected to.)

LINUS M. PRICE.

Attest: JOHN G. STETSON, *Examiner.*

89 *Exhibit Statement of Deposits Made by Banks, etc.* *J. G. S., Ex'r.*

Deposits made by banks between M'ch 18, '82, and May 20, '82.

Newton Savings Bank	$368 06
Stoneham " "	1,578 99
Gardner " "	100 00
Cambridgeport Nat'l Bank	35,470 45
Athol " "	81 17
Old Lowell " "	2,173 10
Plymouth " "	618 51
Union Market Nat'l Bank, Watertown	36,224 14
Sagadahock Nat'l Bank, Bath, Me.	226,818 06
Bath Nat'l Bank, Bath, Me.	138,902 63
Veazie Nat'l Bank, Bangor, Me.	711 78
Merchants' Nat'l Bank, Bangor, Me.	1,266 05
Granite " " Augusta, Me.	18,720 85
Lime Rock " " Rockland, Me.	9,500 00
Newport Savings Bank, Newport, Me.	14,463 67
Thomaston Nat'l B'k, Thomaston, Me.	32,082 45
Georges " " " "	1,228 51
Pacific " " San Fran., Cal.	1,145 75
Bucksport " " Bucksport, Me.	35,019 81
Merchants' " " Dayton, O.	27 50
Biddeford Sav's " Biddeford, Me.	110 00
" Nat'l " " "	76 85
Louisville Banking Co., Louisville, Ky.	175 00
Continental Nat'l Bank, N. Y.	3,454 03
James Dunning, banker, Bangor, Me.	130 00
Merchants' Nat'l Bank, Newburyport	562 19
Mechanics' " " "	16,253 42
Central " " Boston	75,000 00
Commercial " " Dubuque, Iowa	171 91
	$652,434 88

90 *Exhibit Capital Stock Transfer Statement. J. G. S., Ex'r.*

Transfers of stock of Pacific National Bank from November 18, 1881 to May 20, 1882.

Date.	Transferred by—	Transferred to—	No. shares.
1882.			
Feb. 13	Ellen L. Frost	George S. Trowbridge	10
13	Ellen L. Frost	Ellen L. Meacham	10
13	Lewis Coleman	Abner Coburn	100
13	Emma Lewis Coleman	Abner Coburn	50
23	B. F. Parrott	Lewis Coleman	10
Mar. 18	Lewis Coleman	James G. Butrick	50
20	E. W. Colburn	Geo. B. Talbot, as coll.	16
23	Dustin Lancey	Newton Savings Bank, as coll.	10
23	Louisa A. Lancey	Newton Savings Bank, as coll.	10
23	Home Nat. Bank	Newton Savings Bank, as coll.	20
23	N. B. Johnson	Newton Savings Bank, as coll.	20
25	John P. Taylor	Wm. J. Best	20
27	B. F. Parrott	Wm. J. Best	10
27	Wm. J. Best	Maggie L. Best	10
27	Wm. J. Best	Wm. E. Best	10
Ap'l 4	Edmund Daniels	Timothy Remick	10
4	Matilda S. Phelps	Timothy Remick	10
7	E. C. Taft	Helen W. Taft	20
7	E. C. Taft	Helen W. Taft	19
8	Elise K. Goodnow	Lottie A. Best	10
8	W. R. Ilsley	Walter L. Frost	5
8	W. R. Ilsley	John A. Remick	10
8	Will. Aspinwall, trustee	Worcester County Inst. for Savings, as coll.	50
18	H. H. Campbell	J. W. Hobart, as coll.	70
19	Martha L. B. Stoddard	Isaac N. Stoddard	5
26	Sophia H. Langdon	Geo. L. Treadwell	5
26	Fanny P. Treadwell	Geo. L. Treadwell	5
May 4	Mary E. Williams	Wm. J. Best, trustee	10
4	C. A. Rice	Wm. J. Best, trustee	10
4	Martha G. Woodbury	Wm. J. Best, trustee	10

91 It is agreed that the foregoing "statement of certain facts admitted by both parties," together with all the exhibits annexed thereto, shall apply to and may be used by either party in each and every action at law now pending wherein Linus M. Price, receiver, is plaintiff and the alleged stockholders of the Pacific National Bank of Boston are the several defendants, and also in each and every suit in equity which is now pending, or may be hereafter commenced, by the alleged stockholders severally against said Price to restrain him as said receiver from prosecuting said actions at law, the parties reserving the right to object to the legal competency of any or all the foregoing facts, and either party being at liberty to introduce any other evidence he may see fit.

It is further agreed that the foregoing depositions of Richard Stone and Linus M. Price, taken in the case of Charles E. Morrison

against Linus M. Price, receiver, No. 2033, equity, together with the exhibits annexed thereto, may be introduced by either party as evidence in each and every action at law brought by said receiver against said alleged stockholders and in each and every suit in equity which is now pending, or may be hereafter commenced, by the alleged stockholders severally against said Price, receiver, to restrain him from prosecuting said actions, subject, however, to all legal objections as to the competency and relevancy of said testimony, and subject to the special objections appearing on the face of said depositions.

(Signed in duplicate.) A. A. RANNEY, *For Receiver.*
BENJAMIN N. JOHNSON,
For Various Parties for Whom he Appears.

92 EXHIBIT 18.

Bill of Complaint. (*Filed Dec.* 20, 1883.)

Circuit Court of the United States, District of Massachusetts. In Equity.

LINUS M. PRICE, Receiver,
v.
LEWIS COLEMAN *et al.* } No. 1964.

Sections 2, 19, 20, and 21.

2. That at the time when said banking association was found and declared to be insolvent, and your orator was appointed a receiver as aforesaid, it was deeply and hopelessly insolvent, and had committed many acts of insolvency prior thereto, the whole capital stock paid in up to that time had been exhausted, wasted, and lost, together with all surplus theretofore accumulated, if any; that the indebtedness of said bank, as proved before your orator as receiver, was not less than $1,953,218.17, and there was, in addition, a large amount of indebtedness which has been presented for proof, and, being in dispute, is not yet allowed, the same being not less than $470,176.96; that it is claimed and contended by the shareholders that the last increase of the capital stock was illegal and void, and that those who paid for the new shares in that increase have a valid demand for the recovery of what was paid therefor to the amount of about $461,300; that this is denied by your orator, and the question is in dispute and as yet is unsettled; that your orator has proceeded to close up the affairs of said bank and to collect, sell, and dispose of the assets of the same, but has been able thus far to realize only about $185,266.84 out of the same, and, according to his estimation and judgment, what remains uncollected and not disposed of will not exceed in value $289,032.16; that all of the assets, when collected and disposed of, will not be sufficient to pay the indebtedness of the bank to its creditors, but will fall short thereof to the amount of about $1,500,000, as he, your orator, judges and therefore avers, and there will be nothing with which to pay the indebtedness to the stockholders, or

any part thereof; that it became necessary for the said Comptroller of the Currency, and he did adjudge and order, on or about the twenty-seventh day of November, 1882, in pursuance of the provisions of the acts of Congress in that behalf made, that the individual liability of the stockholders of said association should be enforced, and accordingly an assessment of one hundred per cent. on the par value of the capital stock was made and ordered to be collected, but none of the same has as yet been paid, and payment
93 thereof is resisted, and suits have been brought to recover them, which are now pending; that on or about the tenth day of January, A. D. 1882, the bank made a voluntary assessment of its shareholders, and called upon them to pay in an assessment of one hundred per cent. on the par value of the stock for the purpose of making good and restoring the prior capital stock which had been impaired and, in fact, exhausted and lost, this last assessment being a voluntary one, and the sum of $742,800 or thereabouts was paid in in cash as the, or a part of the, said voluntary assessments, but the rest remained unpaid on the twenty-second day of May, A. D. 1882, and has never been paid to your orator since then; that the money collected upon said voluntary assessments was exhausted and paid out to creditors and in expenses before said May 22, A. D. 1882; that the shareholders who paid the said voluntary assessment as aforesaid contend and claim that the same was illegal and void, and some or all of them contend that the sums paid thereon constitute an indebtedness against the bank, which your orator, however, denies; that the assessments made by the order of said comptroller, if collected, will be insufficient to pay the indebtedness of the bank when added to the avails of the said assets which have come into the possession of your orator as receiver as aforesaid.

94 19. And your orator further alleges and shows that under the Revised Statutes of the United States and the acts of Congress relating to national banks it was the duty of the said bank, when its capital stock became impaired by reason of losses by bad debts or otherwise, to pay up the deficiency in its capital stock or to go into liquidation, and by the acts of Congress and its articles of association the said bank had power to dissolve itself and go into liquidation at any time by the vote of its shareholders owning two-thirds of its stock, and it was the duty of the directors of the said bank to make frequent examinations into the affairs of said bank and to ascertain from time to time whether its capital stock had been impared in any manner, and to report the fact, if it existed, to the stockholders of the said bank and to the Comptroller of the Currency of the United States; that on or about Sept. 13, 1881, and long before that date, just how long your orator does not know, the surplus and undivided profits of the said bank, then and for some time thereafter nominally standing upon the books of said bank, had been in fact exhausted, and the capital stock of the said bank had been impaired and in fact wholly lost through losses by bad debts and by loans improvidently made by the officers of said bank to sundry persons, as hereinbefore and hereinafter more particularly shown; that the said fact was either known to the said directors of the said bank

then in office or could have been ascertained by them by an examination of the books and affairs of said bank; that a proper examination by the said directors then in office would have demonstrated the fact that of the time paper of said bank called "notes discounted" on the books thereof, aggregating $2,438,586.36, which stood and figured in the statement of said bank as good assets, over $500,000 thereof was utterly worthless, and another portion thereof, to the amount of over $500,000 more, was of uncertain and doubtful value and not likely to be realized in money to any great extent; that by reason of the failure of said bank, its officers and directors, to
95 keep or have kept a record of the items constituting what was called the "demand or temporary loans," as styled on the books of the said bank, and which, on the said thirteenth day of September, 1881, aggregated $761,323.15, it is not possible now to classify and give the value of the same with accuracy, but from the best means of information which your orator can obtain and has he says that a large if not a greater portion of the said temporary loans was of little value, if not utterly worthless; that in fact the said bank at that time had lost its entire capital and was then insolvent, and this fact would have appeared to be so to the directors after a proper examination of the condition of the said bank and its assets; that it then became and at all times was the duty of said directors then in office to ascertain said facts (if they did not actually know the same), to report the same to the said comptroller and to the stockholders of the said bank, for their appropriate action thereon; but the said directors then in office neglected and failed to make such report, or to make the proper examinations if they did not actually know the said facts and report the result of the same, or in any manner to bring such facts to the knowledge of said comptroller or of the said stockholders, and they willfully and negligently allowed said bank to continue its business after said losses occurred and to incur other and greater losses thereafter; that they made no effort whatsoever to restore the said capital stock or to procure the impairment thereof to be made good; that, instead of doing so, they proceeded on the said thirteenth day of September to vote that said capital stock be increased from $500,000 to $1,000,000, allowing the stockholders to take the new stock under said increase at par, and said old stockholders did take the said new stock under said increase to the extent of $461,300, and the rest of said increase of stock was subsequently cancelled and not taken; that if the said facts had been communicated to the stockholders or to the said Comptroller of the Currency such increase of the capital stock would not have been made or sanctioned, and the said impairment of capital before said increase of stock was made would have been made good or said bank would have gone then in liquidation and further losses prevented; but by reason of the negligence and wrongful conduct of the said directors and their inattention to their duty aforesaid the said
95*a* increase of capital stock was made and the money paid in as aforesaid upon the new stock issued, the said bank was allowed to continue in business after such losses as aforesaid had occurred and the capital stock was lost and under the management of the

same officers, without any supervision, control, or directions on the part of said directors whatsoever, and further losses by bad debts, misapplication of funds, and other improvident, wasteful, and criminal acts committed by some of the officers of the said bank were incurred.

20. And your orator further alleges and shows that, independently of the said acts of Congress relating to national banks, the directors of said bank were trustees for the said bank and for its stockholders and creditors, and were bound to attend to the interests of said bank and of its stockholders and creditors faithfully, diligently, and prudently, and that it was the duty of said directors, by virtue of their position as trustees, to ascertain from time to time, by diligent inquiry into the affairs of said bank, whether said bank had sustained any losses, or whether its capital stock was impaired, and to make known such facts and the general condition of the said bank and the methods of its management to the stockholders of said bank, which duties the said directors wholly neglected and failed to perform; that, on the contrary thereof, the said directors intrusted the management of the business of the said bank almost entirely to the said Benyon and the cashier, and failed utterly to examine into and scrutinize their conduct and to exercise such scrutiny and control as their duty required in the premises; that said directors, as your orator is informed, pretend and claim that they acted in good faith, and believed in the honesty, integrity, and business capacity of said Benyon, and on that account made no examination themselves into the business of or as to the standing or condition of said bank at any time; but your orator charges that they were wanting in common prudence and were guilty of gross neglect in this particular; that said Benyon was in fact untrustworthy, and said directors by the exercise of proper diligence and the ordinary sagacity which they possessed could and would have discovered the same; that they were repeatedly and ineffectually warned against him and informed of his illegal and improper
96 conduct in the management of the bank and failed to heed the same; that they suffered him to loan the funds and moneys of the bank and to keep a record of the same in the form of a call or demand loan account, and said directors never looked into or scrutinized the same, and that this said account soon absorbed and contained a large portion of the loans of the bank; that especially when it was proposed to increase the capital stock of said bank to $1,000,000, on or about Sept. 13, 1881, it was the duty of said directors to examine into the condition of the same and ascertain how it then stood; that instead of doing so they took the statements of said Benyon; that he falsely pretended that the bank was doing a profitable business, and he desired to enlarge it, whereas in truth and in fact his object was to obtain more money with which to relieve the bank from its present embarrassments; that, in fact, the capital stock which had been paid in prior to that time had been substantially all lost; that this fact was well known, at least to said Benyon, or he had reason to so believe, and that the directors either knew or might have known it if full and proper examinations, such as was

required, had been made into the affairs of said bank; that, notwithstanding this, the said directors, on Sept. 13, 1881, voted said increase of capital stock, the old stockholders having the right to take up the new stock at par; that the actual condition of the bank was misstated to or concealed from the stockholders and the Comptroller of the Currency, and that thereby the stockholders were induced to take up the new stock at par and to pay into the bank money for the same to the amount of $461,300, and that the said increase of capital stock was accordingly authorized by the said comptroller; that the new stock was taken up to the amount of 4,613 shares, and the balance of the increase not being taken up, it was voted to cancel the same, and this was done, making the capital stock $961,300; that the bank, after obtaining the said sum of $461,300 for said new stock, continued in business till Nov. 18, 1881, when it failed; that at the time of the failure the capital of the bank had all been lost. Your orator charges that by reason of the misconduct of the said directors and their failure to discharge the duties imposed upon them (as hereinbefore and as hereinafter set forth) the stockholders of said bank lost not only their original stock as taken, but also all the moneys paid in on the two
97 several increases of the capital stock of said bank and the voluntary assessment made as aforesaid and as hereinafter set forth, and are now rendered liable to pay another assessment of the same amount as made by the comptroller as aforesaid, in order to meet the liabilities of said bank to its creditors.

21. Your orator further alleges and shows that the said bank, when it suspended or failed in November, 1881, was deeply and hopelessly insolvent; that if a full and accurate investigation of its condition and affairs had been made, with a reasonable and proper estimate of the value of its property, it would manifestly so have appeared; that one William J. Best had at that time large amounts of deposits in said bank, as had certain corporations and concerns with which he was connected and in which he had a large interest; that certain of the said directors who were in office at that time and who knew most of the condition and affairs of said bank were situated in like manner; that said Best and the said directors were largely interested in having said bank resume business and not go into liquidation, to the end that the large amount of money so deposited or on deposit, as aforesaid, might be drawn, in whole or in part, without the long delay which would occur in the event of the bank being closed up by a receiver; that besides this the directors had been accused and threatened with suits for neglect and maladministration in the previous discharge of their duties in that capacity, and it was supposed and believed that they would be relieved from such a charge and from suits based thereon if the bank resumed and continued business for a while only, although it might ultimately be forced into liquidation; that accordingly said Best set himself about the work of endeavoring to get the bank apparently into a condition and to obtain the consent of the said comptroller for said bank to resume business; that said Best was an incompetent and unfit man for the business intrusted to him; that he and said directors, who

were interested as aforesaid, proceeded to examine into the affairs of said bank and to endeavor to arrange its affairs with a view of resumption; that by their persistent efforts and endeavors they succeeded, through inflated and unwarrantable estimates put upon the values of the property of the said bank, in convincing a greater part of the stockholders of the same; that by the aid of the voluntary assessments, made as hereinbefore stated, and the money realized thereon, when paid, the impaired or lost capital of said bank would be restored, and the bank be put in a fit condition to resume business, and accordingly the said assessment was made, and a greater part of the said stockholders paid into the bank the amount of same to the extent hereinbefore stated, relying upon the representations and reports of the said Best; that the said Best and a portion of the said directors then proceeded, by urgent statements and representations, to induce the said comptroller to assent to the proposed resumption, and that the affairs and assets of the said bank, which had been put in charge of a bank examiner, Daniel Needham, upon the said suspension, might be again placed in their hands; that they succeeded, by means of representations as to the condition of the bank and the value of its assets, by a change of president and the adding of two new directors to the board in place of those who had resigned, in obtaining the consent of the said comptroller that a resumption might be attempted and tried and the assets and affairs of the bank be again put into the hands of the said directors, and this was accordingly done on or about the eighteenth day of March, 1882. But your orator alleges and charges that said bank was then hopelessly insolvent in fact, and that the condition of the same was such as not to warrant resumption, but to require said bank to be closed up in liquidation; that said comptroller was deceived by said representations and statements, and induced thereby to grant said leave, when such leave would not have been granted if statements and representations had been made according to the actual state of the facts and upon careful and correct estimates of values; that the said directors improperly intrusted the examination of the condition of the bank and the valuation of its assets to the said Best, and relied upon inflated and overdrawn statements and reports made by him of the result; that he succeeded in misleading and deceiving many of the said directors then in office, the said Needham, and the said comptroller, as your orator is informed and believes and therefore charges; that the condition of the said bank and the value of its assets and the amount of its liabilities *was* represented to the stockholders and the directors and the said Needham and the said comptroller to be as stated in the reports and communications, which are hereto annexed in copy marked "Exhibit D;" that while your orator is informed and believes that some, and perhaps most, of the directors then in office honestly believed in the truth and candor of said statements and reports, and that they were misled and deceived by said Best, and were induced to rely upon the examinations made by others, without examining and judging for themselves, certain it

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is that the said statements and representations made as aforesaid were not warranted by the facts; that the directors, in order to make the bank appear to be solvent and able to resume business, adopted valuations, made by said Best and others, very much in excess of the known real or probable value; that there was some property the value of which was raised or marked up beyond the value as it appeared on the books of the bank, and higher than the facts would warrant; that there was a list of assets deemed and represented in said statements and representations to be doubtful or bad, and, in order to make good a deficiency which would exist in case $150,000 could not be realized out of them, the directors voted and agreed to guarantee that that amount should and would be realized out of them, and this was made in the proposition communicated to the said comptroller, a condition of the resumption, and on which said leave was granted; that a bond to that effect, to be given the said bank, was promised by said directors, but the same was never perfected and given, so as to be of any validity or value, as said directors now assert and claim, and said guaranty was never complied with; that in truth and in fact the said bank gave, and said directors took, security for and against said guaranty or bonds, the said security being in the shape of real estate of the bank, or to which it was entitled, and which was conveyed, as is now alleged and claimed by said directors, to said Best in trust for them and for said purpose; that the fact of said security being given was not communicated to or known to said comptroller before said leave was given as aforesaid; that said directors were permitted to attempt a resumption and make a trial of the same upon their urgent request and on the strength of their representations, and which did not prove to be and were not in fact well founded; that they asked leave and desired to take the responsibility of the same, and were permitted by said comptroller to do so; that
100 at the same time said Needham warned them on the subject, and brought to their attention certain facts which, to prudent and wise men anxious only to do their duty without regard to their own private interests, would have shown the utter hopelessness and futility of the attempt at resumption; that they were warned and well knew that the bank had lost by said Weeks and by a settlement just made with him about $882,500; that the stock and bonds of the Nantasket company held among the assets of the bank and valued in said estimates at about $184,000 were not worth anything like that sum, and were not salable in the market; that the real estate held by the bank was greatly overvalued and not salable in the market; that the assets were very uncertain; that there was an enormous amount of liabilities which had been recognized as valid and must be met, while included among the assets there was overdue paper aggregating $780,000, sixty-eight thousand dollars of which at least was a renewal of paper previously overdue and then overdue for the second time; that $600,000, embraced in what was called "other stocks, bonds, and mortgages," was such that it could not find a ready market, at least at any such prices as they were estimated in said statements and accounts, and they were in fact of comparatively small value; that the debts due the bank and estimated doubtful, and for which

said guarantee or bond was proposed to be given, were in fact worthless substantially; that the time and demand loans, constituting the main bulk of the assets of the bank and out of which the liabilities of the bank must be met, if at all, were of far less value than was estimated and were uncertain; that the real estate included in said estimates depended upon a variable and uncertain market; that some $354,000 of the amount of said voluntary assessment had not then been paid in, and the validity of the same with the issue of said last new stock was doubted and contested by some of the stockholders; that the liability of the said bank had been just swelled by the addition of $325,000, which said sum had been just recognized as due the Central National Bank on checks held by it, and which indebtedness did not appear on the books of the said Pacific National Bank; that, notwithstanding these considerations were brought home to the knowledge of the directors, the said directors took the responsibility and proceeded to open the
101 doors of said bank and resumed business; that said directors, in doing so, were improvident, unwise, neglectful of duty, and violated the trusts imposed upon them; that, however sincere and honest many or most of the directors might have been in doing so (as they claim they were in fact), and however hopeful of success they may have been at the outset, it was soon demonstrated to them that the bank could not go on and do business successfully; that they found out and well knew this was so within two weeks, or at least a month, after their attempted resumption, and were then, at least, bound to stop and have said bank go into liquidation; that sundry suits were brought against them by several creditors, whom they would not and could not pay, and the property of the bank was attached on the writs, and, bonds being given to dissolve said attachments, said directors conveyed property of the bank to the value of about $100,000 to secure and indemnify the sureties on said bonds, thus tying the same up and depriving the bank of its use, and securing some creditors as an unlawful preference, when the bank was sure to fail and go into liquidation in the end; that the bank failed to secure again the confidence of the business community, as might reasonably have been apprehended at the outset; that they found that they could do, and did, in fact, do, very little business in banking, the bank being compelled to have rediscounted at other banks all paper discounted by it in order to put it in funds with which to meet its present liabilities; that instead of stopping and going into liquidation, as it was bound to do upon these facts appearing, the said directors proceeded to collect in all they could of the said voluntary assessments unpaid at the said time of resumption until the whole amount had been paid, except about $218,500, concealing the said facts from said stockholders until said payments were made; that between the said time of resumption and the time when said receiver was appointed the said bank paid out in expenses and to creditors substantially all of its available assets, including all the moneys collected on said assessment since it was made, without increasing the assets of the bank in any respect, or earning or making any considerable amount of money by new busi-

ness; that a considerable amount of the indebtedness of the bank as it stood at the time of resumption (just how much your orator
102 is now unable to state more fully) was paid in full, thus preferring such creditors over others when the bank had committed acts of insolvency and was then insolvent, and which was in violation of law; that the said bank, during that time, did not keep or have the amount of reserve required by law, and violated the law in that respect also.

Your orator charges that said directors then in office were guilty of gross negligence and a violation of duty in that they did not ascertain and communicate the facts to the creditors and the stockholders of the said bank and put the bank into liquidation; in that they undertook to resume business as aforesaid at all, and when they had resumed; in that they did not stop business when it was first fully discovered that the bank was still insolvent and could not succeed in its attempted resumption, and go into liquidation, or make the facts known to said comptroller, instead of going on and using up and wasting all of the available assets of the bank with the results hereinbefore set forth more fully; that their conduct in this respect caused great loss to the stockholders and some of the creditors of said bank, for which said directors then in office are responsible, and of which your orator prays an account may be taken under the direction of this court.

103 The following addition to the agreed statement of facts is agreed to by the parties:

Addition to General Agreed Statement of Facts.

The following facts are agreed to be true, subject, however, to all legal objections.

All those who subscribed to the $500,000 increase, voted by the directors September 13, 1881, did not pay the assessment upon any increased capital. The assessment was paid, however, by a large majority of them in number and amount.

The last payment upon the voluntary assessment was made May 18, 1882. This payment was one of $4,000, and was made by the Ipswich Savings Bank.

When the bank suspended, November 18, 1881, William J. Best, as trustee, was a creditor of the bank to the amount of $3,114.93, and was president of a corporation which was a creditor of the bank to the amount of $251,907.50.

A. A. RANNEY,
Att'y for L. M. Price, Rec'r.
BENJAMIN N. JOHNSON,
For Complainants.

104 & 105 The following is the evidence, in addition to the agreed statement of facts, used at the hearing of said cause before said circuit court:

Evidence for Complainant, taken Pursuant to the Sixty-seventh Rule of the Supreme Court of the United States, in Equity, as amended, before me, John G. Stetson, Examiner.

BOSTON, *June* 15, 1885.

Present: Albert P. Gould, Esq., and Benjamin N. Johnson, Esq., of counsel for complainant; A. A. Ranney, Esq., of counsel for defendant.

Deposition of Phinehas J. Stone.

Direct examination by ALBERT P. GOULD, Esq., of counsel for complainants:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Phinehas J. Stone; seventy-five; Boston, Mass., Charlestown district; president of the Charlestown Five-Cent Savings Bank.

Int. 2. How long have you been president of that bank?

Ans. Since its inauguration in 1854—thirty-one years.

Int. 3. Has it a board of trustees; and, if so, what is the number?

Ans. It has; twenty-two in number.

Int. 4. Did that bank own any shares in the Pacific National Bank of Boston of its issues of stock prior to September, 1881?

Ans. Not any.

Int. 5. Did it at any time acquire sixty shares of the issues prior to September, 1881; and, if so, when?

Ans. Yes; about Sept. 17, 1881, I think.

Int. 6. Please state whether the said savings bank subscribed for and paid for a hundred and forty shares of the proposed increase of the capital stock of that bank to one million dollars?

106 Ans. We paid for a hundred and forty shares of the new stock to increase the capital to one million dollars.

Int. 7. When you made that payment did you receive from the Pacific bank a receipt for that money?

Ans. I have no doubt I did. We received a receipt, and when the certificate of stock was delivered we surrendered that receipt to the Pacific Bank.

(The defendant is here called upon to produce that receipt, and it is produced and annexed, marked "Exhibit 1. J. G. S., Exr.")

Int. 8. Is Exhibit 1 the receipt which you received upon payment of fourteen thousand dollars for the new stock?

Ans. It is.

Int. 9. Please state whether said savings bank paid a sum of money upon two hundred shares in said Pacific National Bank as a contribution towards the payment of the debts of said bank; and, if so, when and to whom, and how much?

(Objected to as leading.)

Ans. It did, on the 18th of March, 1882, to the cashier (he so styled himself by stamping on our stock), twenty thousand dollars.

(Answer objected to, without the stock is produced with what is stamped on it by the cashier.

The certificates of stock are produced by the witness.)

Int. 10. Have you now the certificates referred to before you, one for sixty shares of the old stock, the other for one hundred and forty shares of the proposed increase of stock; and, if so, please state what endorsements are upon those certificates?

Ans. I have; on the certificate for sixty shares is stamped and written, "Boston, Mch. 18, 1882. An assessment of one hundred per cent. has been paid on this certificate. E. C. Whitney, cashier." And a like stamping and writing is made on the certificate for one hundred and forty shares.

Int. 11. Please state the circumstances under which you made, in behalf of said savings bank, this said payment of twenty thousand dollars, and the purpose for which it was paid.

Ans. I saw Mr. Needham, in whose charge the bank was at
107 that time, possibly on the 18th of March, 1882, but I think two or three days prior, and I asked him if, in his opinion, the bank was in a condition to pay its indebtedness. His answer was "Yes." I asked him further, if we paid our assessment, whether it would relieve our bank, the savings bank, from any further assessment. His reply was "It would." I then asked him if he advised me to pay the assessment. He said he should. I then replied to him, "It shall be paid."

The assessment was made for the purpose of paying the indebtedness of the bank, and we so understood it.

(Answer objected to, so far as it states conversation with Mr. Needham and what Mr. Needham said.)

Int. 12. Where did that interview with Needham take place?

Ans. In the Pacific Bank.

Int. 13. Did you know at that time that a claim was made against your bank that it was liable to a contribution of one hundred per cent. upon the par value of said two hundred shares towards the payments of the debts of the bank?

Ans. I did.

Int. 14. Had you more than one interview with Mr. Needham at the bank on the subject of your payment of the assessment upon that stock before it was actually paid?

Ans. Yes, several; three or more.

Int. 15. State whether or not he, at any other time than the one already mentioned, gave you, or any other of the trustees of your bank, any assurances respecting the effect of the payment of the assessment, if you made it; if so, state [as] nearly as you can the conversation.

(Objected to as incompetent.)

Ans. Mr. Thompson here, one of our trustees, was present with me at all our interviews, I think. The first time I sent for Mr. Needham. He was not at the bank, and he came to the bank to meet me. I said to Mr. Needham, "We are here to say to you

that our assessment will not be voluntarily paid until assured by some government official that that assessment will be final, and we shall not be assessed again." Mr. Needham replied that it
108 was an unfortunate affair, and that there was but one of two ways to get out of it: first, pay the assessment; second, have the bank placed in the hands of a receiver. My reply was, I thought the latter course the better. His answer was, he thought there was something about the bank worth saving. If it went into the hands of a receiver the bank must be wound up. That is the substance on that occasion; interview very short.

Int. 16. Did he upon that occasion or any subsequent occasion before the money was paid assure you that, if you paid the assessment voluntarily, the stock could not be assessed again for the payment of debts?

(Objected to as leading and incompetent.)

Ans. He did. My interviews with him all the way through were with regard to paying this assessment, and not being assessed again.

Int. 17. At the time the twenty thousand dollars was paid, had you any knowledge of the action of the board of directors or of the Comptroller of the Currency respecting the increase of the capital stock of the Pacific Bank, which took place in December, 1881?

Ans. I don't know that I understand the question.

(Question reread.)

[Ans.] Not any.

Int. 18. What was the motive or purpose of the Charlestown Five-Cent Savings Bank in paying the $20,000 on the 18th of March, 1882?

(Objected to as incompetent.)

Ans. The object was to release it from any further payment in regard to the debts of the bank.

Cross-examination by A. A. RANNEY, Esq., of counsel for defendant.

Cross-int. 19. Have you ever been connected with any national banking association?

Ans. No, sir.

Cross-int. 20. Your bank, as a savings bank, has been a large owner in the capital stock of national banks, has it not?

Ans. It has.

109 Cross-int. 21. For how long a time?

Ans. Twenty-five years on.

Cross-int. 22. You are familiar, as a trustee, with the national banking acts, are you not?

Ans. No more than as a holder of bank stocks; I am some.

Cross-int. 23. You mean that, as an individual, you were an owner of stock in national banks as well as your bank, do you?

Ans. I mean as a trustee. I am not an individual owner of such stock.

Cross-int. 24. As a trustee of a large savings bank you were aware that stockholders in national banks were liable to a large assessment, were you not?

Ans. Yes.

Cross-int. 25. And were you not aware, also, that the statute provided for two kinds of assessments, one for making good lost or impaired capital and the other, made by the comptroller, to pay the debts of the bank on its failure?

Ans. I was.

Cross-int. 26. You say that you took one hundred and forty shares of the new stock under the last voted increase of capital. Can you give the date when your bank paid the money for the new stock?

Ans. Between Sept. 25 and Oct. 1, 1881.

Cross-int. 27. You heard, did you not, of the bank's failure or suspension in November, 1881?

Ans. Yes.

Cross-int. 28. Did you take any steps or make any inquiries about the condition of the bank between that time and the time you had the interviews with Mr. Needham you have spoken about?

Ans. I did.

Cross-int. 29. Did you make any inquiry for the purpose of ascertaining how much of the proposed increase of stock had been taken up and paid in?

Ans. I did not. I supposed it had all been subscribed for and paid in.

(Objection is made to that part of the answer which states suppositions as not responsive.)

110 Cross-int. 30. Did you attend a stockholders' meeting, held Jan. 10, 1882, of the Pacific Bank?

Ans. I did not.

Cross-int. 31. Which of your trustees did?

Ans. Francis Thompson, who is here present.

Cross-int. 32. Your bank had notice as stockholder of that meeting, did it not?

(Objected to as calling for secondary evidence.)

Ans. The ordinary notice of an annual meeting published in a paper.

Cross-int. 33. Who designated Mr. Thompson to attend for the bank?

Ans. The trustees.

Cross-int. 34. State whether he made a report to the trustees after he attended.

Ans. He did not.

Cross-int. 35. Did you see the report of the proceedings as published in the Boston "Herald?"

Ans. I did not.

Cross-int. 36. When you paid the assessment of $20,000 had you or your bank received notice prior to that time of the assessment laid?

Ans. Yes.

Cross-int. 37. In what way or form had you received it?

Ans. Written notice from the president.

Cross-int. 38. Will you please produce it?

Ans. I haven't the paper with me.

Cross-int. 39. Will you please get the paper and produce it and have it annexed to this your deposition?

Ans. I will if I can find it.

Cross-int. 40. Did you learn in any other way besides by that notice of the assessment being laid; and, if so, how?

Ans. I have no doubt I did learn, but I am unable to state how.

Cross-int. 41. Don't you think you learned it from Mr. Thompson, who was present at the meeting when the assessment was laid?

Ans. Mr. Thompson is here, and can state that he remained
111 but a short time at the meeting, and reported to me the next morning all that he knew about it while he remained. I didn't learn it from Mr. Thompson.

Cross-int. 42. If you didn't learn it from Mr. Thompson, and did learn it from some other source, will you try and recall and state how you did learn it other than from the notice from the president?

Ans. I think I have answered that question fully. I say I do not know; it was a matter of general notoriety within a week after that event.

Cross-int. 43. When you paid the assessment of $20,000, did you investigate and see what the assessment was for before paying it?

Ans. I don't think we made any particular investigation.

Cross-int. 44. You have said in your previous answers that you understood that under the law there were two kinds of assessments, one to make good lost or impaired capital, and to prevent the bank going into the hands of a receiver, and the other made by the comptroller after the bank had gone into the hands of a receiver to pay the debts; one being by law, as you perceive, a voluntary assessment, and the other an involuntary one; now you knew or understood, did you not, that you were paying a voluntary assessment?

(Complainants object to the question because it assumes that the witness has said what he did not say, to wit, that one of the assessments was to be made after it went into the hands of a receiver, and because the question is argumentative.)

Ans. I understood that we were paying a voluntary assessment, after being fully assured by the Government examiner that the latter would not be resorted to, or, in other words, that the bank would not go into the hands of a receiver.

Cross-int. 45. You knew then or had been informed that an effort was being made through a voluntary assessment to put the bank in a condition so that it could go on again in business, did you not?

Ans. Yes; I learned that from the bank examiner.

Cross-int. 46. You knew, then, or understood that the object of the assessment was to prevent the bank going into the hands of a receiver?

Ans. Yes; I understood that from the bank examiner.

112 Cross-int. 47 (*de bene*). Do you then mean to say or to be understood that, if the bank was put into a condition so that it could go on in business, and it did resume business and go on, and should fail again at some future time, and go into the hands of a receiver, the stockholders would not be required to pay the involuntary assessment?

Ans. I don't mean to say anything of the kind. If the debts of the bank were fully satisfied by the voluntary assessment, and the bank should fail again in the course of years, I don't pretend to say that an involuntary assessment might not be levied.

Cross-int. 48 (*de bene*). You say that Mr. Needham told you the effect of paying a voluntary assessment. Now did he tell you any more in substance than this: that the attempt was being made to save the bank or to put it on its legs again by a voluntary assessment, and that if this assessment was paid it would have that operation; and coupled with this statement the further one that, if this assessment was not paid, the bank would go into the hands of a receiver, and an involuntary assessment be laid?

Ans. I think I have answered the substance of this question when I stated that Mr. Needham informed me that unless the voluntary assessment was paid the bank would go into the hands of a receiver, and an involuntary assessment would be collected; and that I replied to that, that I thought that the better mode of procedure; and he replied that he thought there was something there worth saving.

Cross-int. 49 (*de bene*). Then the amount of it was that you gave up your opinion and took that of Mr. Needham, and concluded that it would be better to try and save the bank, was it not?

(Objected to as immaterial.)

Ans. After his assurance that we shouldn't be assessed again.

Cross-int. 50 (*de bene*). His assurance was that you shouldn't be assessed again, because the bank would be put into a solvent condition, was it not?

(Objected to as argumentative.)

Ans. So he stated after having the bank in his possession for three months, and stating that it was in a condition to pay its debts.

113 Cross-int. 51 (*de bene*). Did he in any of your discussions read to you the law or any part of it?

Ans. He did not.

Cross-int. 52. Did you or any of your co-trustees read or examine the law before you paid the money?

Ans. No special examination in regard to this matter.

Cross-int. 53 (*de bene*). Where did you get your idea that the bank must go on years in order to make stockholders liable to involuntary assessments?

(Objected to as argumentative, speculative, and impertinent.)

Ans. My idea is that if a bank continues its business for years its old matters must have been settled up and new debts contracted. My idea is a very natural one.

Cross-int. 54 (*de bene*). What investigation, before you paid the

assessment, did you or your co-trustees make into the condition of the bank?

Ans. I went to the bank on two or three occassions to inquire into its condition. I obtained my little definite information from the officers of the bank. I inquired for Mr. Needham, and the answer was that they would send for him. Mr. Needham came in and turned me over to Mr. Best. Mr. Best handed me a report to read. I said to Mr. Needham, "Do you expect me to stop here and read this report through?" He said he would like to have me, for the information I sought. I read the report, found it a very favorable one, asked Mr. Needham if he indorsed it, and he said he knew nothing that it contained that was not correct, and that was the principal information that I obtained.

Cross-int 55 (*de bene*). Was the report which Mr. Best showed you in writing or in print?

Ans. In writing.

Cross-int. 56. A report made to whom?

Ans. To the Comptroller of the Currency.

Cross-int. 57. A report of Mr. Best or of Mr. Needham?

Ans. It was understood to be Mr. Best's report.

(Answer objected to.)

Cross-int. 58. Do you remember what that report contained?

(Objected to as secondary evidence.)

114 Ans. No, I do not.

Cross-int. 59. Do you know whether it was not a report of Mr. Best to the stockholders, at a stockholders' meeting?

(Same objection.)

Ans. I understood it to be a report from Best to the Comptroller of the Currency, showing the condition of the bank.

Cross-int. 60. Did not that report show the amount of capital stock in the bank?

(Same objection.)

Ans. If so I didn't note it at the time.

Cross-int. 61. Will you now state that it did not?

(Same objection.)

Ans. I cannot state it; my recollection does not serve me.

Cross-int. 62. It purported to state, did it not, the condition of the bank in full?

(Same objection.)

Ans. It did.

Cross-int. 63. Can you conceive of a report which states the condition of a bank in full which should not embrace the capital stock?

(Objected to as argumentative and irrelevant.)

Ans. It should embrace it, if a proper report; but a man looking over a written document for a particular point, which is the condition of the bank, might not observe that item.

Cross-int. 64. Do you now remember that you observed any omission of that kind?

Ans. If I had observed it I should remember it.

Cross-int. 65. When was that—before or after you paid the assessment?

Ans. Before the assessment was paid, and four or five days prior.

Cross-int. 66. Was the report signed at the time you saw it by anybody?

Ans. It was a copy with, I think, William J. Best's name attached to it; of that I am not positive.

Cross-int. 67. Were the names of the directors attached to it or appended to it in any way?

Ans. I think not.

115 Cross-int. 68. Did you, before you paid the assessment, look at the records of the corporation, either of the directors' or of the stockholders' meetings?

Ans. No, sir.

Cross-int. 69. Did you ask leave to do so?

Ans. No, sir.

Cross-int. 70. Did you make any inquiry or was anything said as to how much of the new stock had been taken up or paid for?

Ans. No.

JUNE 18, 1885.

Direct examination resumed:

Int. 71. Please hear your answer to Int. 11 read, and state whether you understood Mr. Needham to say that he then had the means of paying the debts of the bank.

Ans. With the payment of our assessment.

Int. 72. Please hear your answer to Int. 25 read, and state what period of time you had reference to in that answer as to your knowledge, and whether you knew it before you paid the assessment?

Ans. I did not know it till after.

Int. 73. When did it first come to your knowledge that it was claimed that there were two methods under the statute in which an assessment of a hundred per cent. on the stockholders might be made?

Ans. I am not able to state. I always supposed that a double assessment could not be made until after the payment of our assessment. I did not know there were two modes till after the receiver was appointed and the second assessment made.

Int. 74. Had you ever examined the statute particularly to see what its provisions were in respect to the liability of the stockholders to be assessed, either for the payment of debts or making up the deficiency of the capital stock, before you had notice that a second assessment had been made by the Comptroller of the Currency?

Ans. No.

Int. 75. Have you searched for the notice of the assessment which purports to have been made by the stockholders, as you were requested by counsel for defendant; and, if so, has it been found?

116 Ans. I have searched and have not found it.

Int. 76. Referring to your answer to Int. 44, state whether, at the time you paid that assessment, you understood that it was one, whether voluntarily or involuntarily paid, which, if paid, would extinguish the liability of your bank for the debts of the Pacific Bank.

Ans. I did.

Int. 77. Referring to your answer to Int. 46, what was your principal object, or the principal motive and object of your bank, in making the payment of that assessment?

Ans. To be relieved from any further assessment.

Int. 78. When you made that payment please state whether you did understand that your bank could not be again assessed for a like amount?

Ans. I did.

Int. 79. Please state whether you now have in you hand a copy of the agreed statement of facts in this case, and state whether the report of Best to the comptroller, to which you refer in your answer to Int. 54, is one of the exhibits annexed thereto; and, if so, give its number.

Ans. I have such copy. The report of Best is Exhibit 13.

Int. 80. Had you any other notice of the meeting of Jan. 10, 1882, than the one published in the Boston Daily Advertiser?

Ans. None other.

PHINEHAS J. STONE.

Attest: JOHN G. STETSON, *Examiner.*

EXHIBIT 1. J. G. S., Ex'r.

$14,000. PACIFIC NATIONAL BANK,
BOSTON, *October 1st*, 1881.

Received of Charlestown 5 C. Savings Bank fourteen thousand dollars, on account of subscription to new stock.

J. M. PETTENGILL, *Cashier.*

117 *Deposition of Francis Thompson.*

BOSTON *June* 16, 1885.

Direct examination by ALBERT P. GOULD, Esq., of counsel for complainants:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Francis Thompson; fifty-nine; Boston, Charlestown district; not in business at present; have been in the iron business.

Int. 2. Please state whether you are now—and, if so, how long you have been—one of the trustees of the Charlestown Five-Cent Savings Bank.

Ans. I am a trustee now, and have been for more than five years.

Int. 3. State whether you attended the annual meeting of the stockholders of the Pacific Bank, Jan. 10, 1882.

Ans. I was present a portion of the time of the meeting; in the early part of the meeting, I think.

Int. 4. Were you there at the close of the meeting; and, if not, why did you not remain?

Ans. I was not there at the close of the meeting. I realized that a piece of rascality had been perpetrated on the stockholders of the bank by the directors; the tone of the meeting seemed to be in their favor and I left.

Int. 5. Did you, or any person representing your bank, vote at that meeting?

Ans. I did not, and no person representing our bank did vote.

Int. 6. State whether shortly after that meeting the officers of the Charlestown Five-Cent Savings Bank were informed that an assessment had been made of one hundred dollars upon each share of the stock held by it in the Pacific National Bank.

Ans. They were so informed.

Int. 7. If you participated in any action taken by the officers of that bank in respect to the payment of that assessment, please state what the action was.

Ans. I advised not paying the assessment. Subsequently, on the assurance of Mr. Needham that that relieved the bank from
118 all further assessment or liability, I assented to the payment by the president.

Int. 8. Please state if you were present at any conference between President Stone, of your bank, and Mr. Needham, the examiner of the Pacific Bank, touching that assessment; and, if so, state the substance of what took place.

Ans. I was; and at that time I gave my assent to the payment of the assessment. The inquiry was made by President Stone of Mr. Needham if, by the payment of that assessment, the savings bank would be relieved from any further liability. His reply was that it would be; and on that statement, knowing his official capacity, I gave my assent. The money was paid at that time.

Int. 9. Do you remember whether at that or at a previous interview between Mr. Stone and Mr. Needham Mr. Stone told Mr. Needham that your bank would not pay the assessment until assured by an officer of the Government that the payment would discharge your bank from liability for the debts of the Pacific Bank?

Ans. Yes, sir; at that time, I think, previous to the payment of the money.

Int. 10. What was the principal motive or object of your bank in paying that assessment?

Ans. To be relieved from further liability.

Int. 11. Did you then know that the United States bank act imposed upon stockholders of national banks a liability of paying an amount equal to one hundred per cent. upon the capital stock towards the payment of the debts of the bank if it should become insolvent?

Ans. I knew that stockholders were liable for the amount of their stock and nothing more; I should say, I so understood.

Int. 12. Had you, at that time, ever read the bank law upon that point?

Ans. I do not think I had.

Int. 13. Did you, at the time of the payment, know that the $500,000 increase of capital stock which was voted by the directors in September, 1881, had not all been subscribed and paid in?

Ans. I did not.

Int. 14. Did you then know or had you then been informed
119 that there was an attempt on the part of the directors in December, 1881, to change the increase of capital stock voted in September, 1881?

Ans. I did not know and had not so been informed.

Int. 15. Did you then know or had you then been informed what, if anything, was entered upon the stock ledger of the Pacific Bank, or upon any other of its books, purporting to show the amount of stock which your bank owned in the Pacific Bank?

Ans. I knew nothing.

(Adjourned.)

JUNE 18, 1885.

Cross-examination by A. A. RANNEY, Esq., of counsel for defendant:

Cross-int. 16. You say you were present at the stockholders' meeting of Jan. 10, 1882. Were you there at the time the meeting was opened?

Ans. I was there a portion of the time; do not think I was there when the meeting was opened.

Cross-int. 17. What occurred while you were there? State all you remember.

Ans. There was a great deal of confusion—noise. I heard some remarks from J. F. C. Hyde, which seemed to give a coloring favoring the action of the directors. The temper of the meeting seemed to be sustaining them.

Cross-int. 18. Were you there when Mr. Needham made his report?

Ans. I don't remember seeing Mr. Needham in the meeting.

Cross-int. 19. Did you see William J. Best and hear him make any remarks?

Ans. I think that I heard Mr. Best say something. A gentleman spoke in an excited manner, and I was told it was Mr. Best. I couldn't exactly understand what he said.

Cross-int. 20. Do you know Richard Stone, Jr., of Morse & Stone?

Ans. I do not.

Cross-int. 21. Did you hear any one speak who was counsel for the bank, or represented to be?

120 Ans. I don't remember that I did.

Cross-int. 22. Do you remember that you did not?

Ans. All I remember is, something was said by J. F. C. Hyde. I don't know whether he was counsel of the bank or not. Henry D. Hyde said something, and Mr. Best.

Cross-int. 23. Who was speaking when you went into the meeting?

Ans. J. F. C. Hyde.

Cross-int. 24. Who was talking when you left?

Ans. Either Mr. Best or Henry D. Hyde; I don't remember which.

Cross-int. 25. What did you hear and learn about the bank when you were there? State everything you did hear or learn while you were there.

Ans. I learned that the affairs of the bank were in a very bad condition.

Cross-int. 26. In what respect?

Ans. A large portion of its capital was supposed to be lost.

Cross-int. 27. Was that all?

Ans. That was enough for me.

Cross-int. 28. Is that all you learned?

Ans. Substantially, yes.

Cross-int. 29. Whom did you learn that of?

Ans. Everybody at the meeting; it was in the air.

Cross-int. 30. You mean that you didn't hear anybody say it, and that it was whispered to you in the air?

Ans. No, I don't. I didn't say that. People about me were talking that way, and that was the way I learned it.

Cross-int. 31. Do you know what any one said to you?

Ans. They said the capital of the bank was gone, or a large portion of it.

Cross-int. 32. Do you know who said it?

Ans. I can't call them by name.

Cross-int. 33. You knew that before you went there, by report in the newspapers or otherwise, didn't you?

Ans. I supposed that that was the condition, but I did not know it.

121 Cross-int. 34. Did you read the account of the meeting of Jan. 10, 1882, after it occurred?

Ans. I don't remember that I did.

Cross-int. 35. Do you remember that you didn't?

Ans. I don't remember that I didn't.

Cross-int. 36. You knew, did you not, or learned at that meeting, that the object was to determine whether to put the bank on its legs again or to determine whether it should go into the hands of a receiver?

Ans. I didn't know what the object was, other than a report to be made to the stockholders.

Cross-int. 37. Hadn't you heard, or didn't you hear at that meeting, that the question under consideration was whether they should make an assessment at that meeting?

Ans. Somebody said the directors wanted to assess the stock.

Cross-int. 38. Did you not learn and understand that the proposition was to put that bank into condition, if possible, so that it could resume?

Ans. I supposed that was the wish of the directors.

Cross-int. 39. Didn't you understand that that was the thing being discussed at that meeting?

Ans. That might have been one of the things.

Cross-int. 40. When you say that might have been one of the things, didn't you understand that that was one of the things?

Ans. By some person there; I don't know whether under authority or not.

Cross-int. 41. Wasn't that the proposition which J. F. C. Hyde and Henry D. Hyde were advocating, whom you heard talking?

Ans. There was so much confusion there I couldn't tell exactly what they were driving at.

Cross-int. 42. Were you, at that time, a director in a national bank; and, if so, in what one?

Ans. I never was a director; I always declined, though I was a large stockholder in the Bunker Hill and the Monument National Banks.

Cross-int. 43. I understand that after the stockholders' meeting of Jan. 10, 1882, at which you were present part of the time,
122 your bank received notice of the assessment which had been laid by the stockholders at that meeting.

Ans. We received notice of an assessment; I don't know whom from or whom laid by.

Cross-int. 44. Did you see it or read it?

Ans. I don't think I did; I think the president told me a notice had been received.

Cross-int. 45. Did you, after you heard of the assessment and before it was paid, take any steps to investigate the matter of the proceedings which led to the assessment?

Ans. I did not.

Cross-int. 46. Did you or your bank or your trustees, to your knowledge, before the assessment laid by the stockholders at the meeting before referred to was paid, investigate the matter of the increase of stock made in the fall of 1881?

Ans. I did not; I only answer for myself. I don't know that anybody did.

Cross-int. 47. You learned or were aware that the bank did resume business in March, 1882, were you not?

Ans. Yes, sir; I understood so from the press.

Direct examination resumed:

Int. 48. Referring to your answer to cross-int. 17, you say there was a great deal of confusion at the meeting; please state what you mean—in what way confusion was produced.

Ans. In the first place, the meeting was held in too small a room for the number present. It was in the banking office, a large portion of which was occupied by counters and desks. Outside these counters the meeting met, those comprising the meeting. The space was narrow and crowded outside the counters. I should think the length was about forty feet, and not more than seven or eight feet in width in some places. I didn't see anybody who appeared to be

chairman or moderator of the meeting, and at times a number attempted to speak at the same time.

Int. 49. Were those present seated?

Ans. I saw no person seated.

123 Int. 50. Were there any seats in the room where the meeting was held?

Ans. I didn't see any.

Int. 51. Do you mean that the whole assemblage was standing?

Ans. Yes.

Int. 52. While you were there did you observe whether there was much walking about among those present?

Ans. It was so crowded it was impossible.

Int. 53. In your answer to cross-int. 17 you say that Hyde seemed to be favoring the action of the directors. What action do you refer to?

Ans. It was the opinion outside that the directors were personally liable, and they, the directors, advocated some plan which would shield them. The action that he favored was that the stockholders should subscribe; should allow themselves to be assessed.

Int. 54. How could the assessment help the directors out, as you understood it?

Ans. By paying the debts of the bank by the stockholders, which should have been done by the directors.

Int. 55. Please hear cross-int. 38 and your answer, and explain what you mean by it?

Ans. To relieve them from personal liability.

Int. 56. From what you heard at that meeting, did you understand that the assessment advocated was to be made, if at all, for the payment of the debts of the bank?

(Objected to as incompetent.)

Ans. For the payment of the debts of the bank, and relieving the stockholders from liability.

FRANCIS THOMPSON.

Attest: JOHN G. STETSON, *Examiner.*

124 *Evidence for Defendant, Taken Pursuant to the Sixty-seventh Rule of the Supreme Court of the United States, in Equity, as Amended, before me, John G. Stetson, Examiner.*

BOSTON, *July* 25, 1885.

Present: Benjamin N. Johnson, Esq., of counsel for complainants; A. A. Ranney, Esq., of counsel for defendant.

Deposition of Linus M. Price.

Direct examination *of* A. A. RANNEY, Esq., of counsel for defendant:

Int. 1. Please state your name, and if you are the receiver of the Pacific National Bank of Boston?

Ans. Linus M. Price; I am.

Int. 2. State whether, when you assumed the duties of receiver, the books of the Pacific National Bank came into your hands.

Ans. They did.

Int. 3. If you have the stock ledger or the official register of the stockholders of the bank, please produce the same.

Ans. I have the stock ledger and I produce it.

Int. 4. Turn to the stock ledger produced and read the same so far as relates to the Charlestown Five-Cent Savings Bank, the complainant in this suit.

Ans. On page 133 is the following:

"Charlestown 5 C. Savings Bank.

1881.

Octo. 1. By { 30 / 30 } shares 60

" " 140 " ..... 140"

125 Int. 5. Will you state whether the Pacific National Bank left any other official register of the stockholders than the stock ledger which you have produced?

Ans. I never saw any other.

Int. 6. Whether any one came into your hands other than that?

Ans. No.

Int. 7. State what the book which you produce purports to contain.

(Objected to.)

Ans. It purports to contain a complete record of the stockholders, or the stock standing in the name of the stockholders, at the time of the failure of the Pacific National Bank.

Int. 8. I see it is marked and you call it a "stock ledger." Look and see if it is a ledger that purports to be posted from any journal; and, if so, state from what journal.

Ans. The book is marked "Stock Ledger No. 1," and it is probably posted from the book known as the transfer book.

(Answer objected to as stating probabilities and not what is known to the witness.)

Int. 9. Have you the transfer book to which you refer; and, if so, will you produce it?

Ans. I have, and will produce it. It is at my office, and I have sent for it, and it will be here soon.

Int. 10. Will you state whether there came into your hands, among the other books of the bank, a certificate book or books; and, if so, will you produce it or them?

Ans. I found two books entitled "Stock Certificates," which I produce.

Int. 11. State what they purport to be and to contain.

(Objected to.)

Ans. They were originally blank stock certificates which were filled out in the usual form, with the name of the stockholder who originally subscribed or afterwards purchased stock, and the certifi-

cates as issued are represented by stubs containing the number of the certificate, its date, and to whom issued.

Int. 12. Will you please state what you find in said cer-
126 tificate book relating to stock issued to said Charlestown Five-Cent Savings Bank?

Ans. I find a stub marked at the top "60" and below as follows:

"No. 723.
Date, Octo. 1, 1881.
Issued to Charlestown 5 C. Savings B'k of Boston."

Also I find a stub marked at the top "140" and below as follows:

"No. 774.
Date, Octo. 1, 1881.
Issued to Charlestown 5 C. Sav's Bank."

Attached to this stub was a receipt signed by J. M. Pettengill, cashier, which was put in evidence as Exhibit 1 in the deposition of Phinehas Stone. This receipt was attached to this stub by my direction, being found among the papers of the bank.

Int. 13. State whether you now have, and, if so, produce, the book which you have heretofore referred to as the transfer book.

Ans. I have before me and produce the book entitled "Transfers."

Int. 14. State whether this is one of the books which came into your hands, as receiver, with the books and papers of the Pacific National Bank.

Ans. It is.

Int. 15. State what it purports to contain.

(Objected to.)

Ans. It purports to contain a record of sales and assignments and transfers of stock by the sellers to the purchasers.

Int. 16. Turn to the book and see whether there is anything there showing a transfer of stock to the Charlestown Five-Cent Savings Bank in October, 1881; if so, state what it is.

Ans. Transfer No. 450 shows a sale and transfer of thirty shares of stock of the Pacific National Bank, by D. T. Mills, to Charlestown Five-Cent Savings Bank, dated Oct. 1, 1881. Transfer No. 451 shows a sale and transfer of thirty shares of the stock of the
Pacific National Bank, by Chapin Thayer, to Charlestown
127 Five-Cent Savings Bank, dated Oct. 1, 1881. There is no further record of transfers to the Charlestown Five-Cent Savings Bank in this book.

Int 17. It seems to appear that the Charlestown Five-Cent Savings Bank had sixty shares only of old stock, and that the rest of their shares was new stock. Is there anything on the books to show where the savings bank got their rights to new stock beyond the amount of their old stock?

Ans. I have found no record of the sale or transfer of rights to new stock.

Int. 18. State what amount of deposits there was made in the bank by parties other than national banks and savings banks between the time when the bank resumed in March, 1882, and the time when it failed on May 20, 1882. In answering, please give a list of the depositors and amounts, and annex it to your deposition.

Ans. The amount was $2,388,617.21. I furnish a list as follows:

List of Depositors and Amounts Deposited Between March 18 *and May* 20, 1883.

Thomas Aspinwall	$40	79
Charles Armstrong	1,360	00
W. O. Arnold	1,499	75
Boston & Breckenridge Smelting Co.	50	00
C. W. Baldwin	5,642	88
L. H. Baldwin	2,885	28
Black Band Iron & Coal Co.	23,994	01
Emery Bemis, Jr.	2,011	57
W. J. Best, trustee	28,810	00
Augustin S. Bemis	2,066	89
Wm. A. Blanchard	225	00
J. F. Bowditch	9,358	92
C. C. Bragdon	39	53
Bergheim Bros.	1,402	90
L. D. Boise & Son	3,773	70
Brunswick Berth Co.	1,637	26
Sidney, Bun & Co.	190	00
W. C. Boardman	1,161	88
Isaac H. Boardman	1,157	74
M. P. L. Butterfield	55	83
Boston & Eureka Mining Co.	1,019	35
Boston Marine Insurance Co.	15,000	00
Boston Loom & Strap Co.	878	82
128 Boston Suspender Co.	4,046	55
Carter & Brugh	9,332	31
C. N. Carter & Co.	42,471	41
M. W. Carr & Co.	881	54
Carruth & Dearborn, trustees	7,600	00
L. E. Chase	2,985	15
Dwight Chester	50,016	30
Lewis Coleman & Co.	198,326	88
Continental Stained Glass Works	145	73
James W. Cofren	1,327	47
E. T. Colburn	2,400	00
Coburn Brothers	52	00
N. H. Coleman & Co.	9,924	20
Russell H. Conwell, tr.	1,326	61
Cook & Aldrich	318	00
E. T. Cushman	18,067	20
Cutter Tower Company	2,460	44
James P. Chaplin	90	00

G. F. Daniels & Co.	$1,534	36
Luther H. Dana	132	20
Wm. S. Denny	3,677	97
E. K. Dunbar	11,299	72
Thomas Dalby & Co.	2,000	00
S. Danforth & Co.	2,861	82
F. A. Dearborn	6,473	17d
George Dexter	1,395	55
Charles Draper	8,146	24
I. S. Dillingham	723	90
Downs & Adams, Silk Man'f. Co.	13,339	22
M. Dyer, Jr., treas.	15,500	00
T. C. Dunn, treas.	4,798	89
Geo. H. Dupee	1,050	41
L. C. Durkee	8,993	04
M. Dyer, Jr.	36,445	21
Lon Dinsmore	2,279	66
Geo. W. Dresser, trustee	2,955	00
M. B. V. Edgerly	141	03
Jesse P. Eddy & Co.	20,502	43
Ellis & Putnam	16,000	00
Geo. R. Eager	400	00
J. S. Eastman	575	60
A. H. Eayrs	1,141	80
H. C. Edwards	511	00
A. J. Foster, adm.	949	22
L. L. Fuller	2,437	15
Geo. H. Frost	6,000	00
H. A. Fobes	187	32
129 Foster & Pierce	1,978	25
W. B. Fowle	34,593	21d
Fowle & Carroll	1,500	00
Fitchburg R. R. Co.	112	47
Annie S. Fuller	70	00
Ford & Godfrey	1,323	70
J. K. Fuller	15,434	45
J. B. Fuller & Co.	10,717	58
Geo. A. Goodyear	1,680	92
W. H. Garfield	2,114	11
W. P. Graham	2,103	55
C. E. Galacar	704	79
Wm. B. Gale	4,279	15
J. R. Graham	101	17
J. L. Greenleaf	5,285	67
H. C. Goodspeed	1,808	05
John P. Gale	1,663	93
Wm. L. Gregg	1,607	94
Hallet & Davis Piano M'f'g Co.	39,213	21d
Geo. T. Hall & Co.	2,435	26
J. W. Harris & Co.	6,291	18
R. C. Hannah	2,642	78

	H. S. Hartley & Co.	$245 00
	Geo. S. Harwood	350 00
	Jas. A. Hayes	52 50
	Haynes Brothers	3,946 86
	Hills & Bullins	5,543 50
	C. S. Hill	862 18
	S. Hushburg & Bro.	13,840 17
	L. Hodsdon	340 21
	C. W. Holden	3,276 90
	J. W. Hobart, receiver	3,271 91
	Hibbard Antimony Co.	7,948 89
	E. N. Hunting	2,941 17
	H. A. Hussell	3,200 00
	Orin Hawkes	150 00
	Isaacs & Co.	754 80
	C. D. Jenkins	76 88
	Jenkins & Co.	110 00
	J. A. Jackson	7,040 66
	L. A. Jones	280 00
	O. S. Knapp, treas.	7,399 80
	W. H. Knowles	289 52
	Kimball Brothers	33,146 50
	E. R. Knapp	5,239 00
	W. L. Knox & Co.	66 00
	Kankakee River Imp. Co.	68 00
130	Kelly & Co.	2,066 35
	C. C. Lane	12,017 34
	J. F. Levin & Co.	397 17
	Dustin Lancy	170 00
	Alfred Laws	353 32
	Lee & Shepard	8,463 28
	Henry Lunt	245 00
	C. A. Linnemann	3,592 15
	W. L. Libby & Son	13,180 91d
	C. M. Litchfield	778 23
	Wm. H. Leatherbee & Son	3,042 57
	L. E. Lewis, ag't	285 07
	S. D. Leavitt	2,030 89
	S. G. Lane	336 67
	Edward Merrill	2,256 25
	F. E. Merriam	3,950 16
	H. McLaughlin	1,000 00
	L. K. Mather	3,323 26
	Geo. T. McLaughlin	4,422 78
	Nathan Matthews	11,200 00
	Mann & Soule	5,057 92
	T. H. Matthews & Co.	931 98
	F. S. Mansfield	9,459 31
	W. H. Milliken & Co.	18,554 92
	D. T. Mills	9,077 89
	O. D. Mooney	1,250 00

	C. E. Morse & Co.	$320 63
	A. P. Moore	75 00
	James T. Moore	493 00
	Midland Imp. and Const. Co.	236,009 00d
	G. W. Munroe	4,210 00
	N. H. Chemical Pulp Co.	1,196 96d
	N. E. Relief Association	160 00
	N. E. Pressed Brick M'f'g Co.	3,096 16
	J. H. Nelson	180 30
	Nonantum Worsted Co.	67,478 80
	Levi Newcomb	463 50
	J. S. Newell & Co.	6,517 18
	W. H. Nichols & Co.	7,058 00
	Rufus J. Paine	95 00
	Augustus Page	748 30
	Silas Pierce & Co.	1,000 00
	Pettingill & Everett	14,337 58
	Post Publishing Co.	13,827 92
	Priest, Page & Co.	1,439 83d
	L. B. Porter, treas.	6,205 10
	E. T. Porter, ex'r.	354 98
131	Samuel L. Powers	478 45
	S. W. Pollard, treas.	348 50
	F. B. Percy	155 00
	W. M. Plummer, adm.	3,038 40
	George H. Quincy	210 00
	J. C. Richardson	19,236 20
	Ranson & Eldridge	2,533 18
	Andrew F. Reed	844 75
	Wm. Reardon	30,933 03
	Edwin Ray	276 05
	Edwin Reed	20,574 14
	Redlon & Cornish	100 00
	W. J. Roberts	1,178 81
	W. B. Robinson	250 00
	J. E. Rogers	1,377 12
	Ira Russell & Co.	25,646 85d
	John Russell, M. D.	1,040 00
	A. A. Rand, trustee	100 00
	Sanderson Bros. Steel Co.	1,485 00
	J. C. Salmon & Co.	6,556 49
	L. M. Sanborn	2,897 34
	Star Newspaper Co.	10,382 34
	Charles P. Shillaber	293 49
	Alfred Schoff	370 12
	John H. Sanborn	747 80
	Shepard, Norwell & Co.	538,423 98
	John Shepard, treas.	347 59
	W. G. Shillaber	32,157 74
	W. A. Simmons & Co.	334 89
	A. H. Soden	23,283 17
	Geo. A. Slack	3,217 72

Spaulding, Cotton & Co.	$1,529	24
Springer Bros.	11,588	18
Arthur Sewall	2,529	17
Mrs. D. C. Styles	250	00
S. A. Stewart & Co.	14,330	42
Henry Stern & Co.	33,716	51
E. C. Soule	993	75
Albert Snow	248	60
C. E. Sheplie	849	80
Constant Southworth	400	00
W. H. Stewart	700	00
Geo. R. Tabor & Co.	2,043	30
Geo. R. Tabor, treas.	3,356	91
The Eager Manuf. Co.	804	61
C. M. Tillinghast, ag't	1,228	38
A. J. Tower	34,917	66d
132 E. Tourjée, treas.	21,214	10d
Geo. L. Treadwell	360	50
John H. Varrell	1,947	12
Ben. P. Walker	91	85
J. W. Wildes & Co.	1,340	47
M. Willis	3,760	59
A. B. Wentworth	1,137	65
Briggs Wadworth	210	00
W. S. Wilder	60	90
Watscheuer Bros.	925	30
Walpole Emery Mills	13,534	55
T. C. Weeks	453	08
F. N. West, agent	1,085	00
H. H. Westgate	8,683	25
J. H. Whitaker, treas.	4,948	17
Willow Dale Manf. Co.	10,128	50
H. L. White	286	69
Mary J. Watts	15,608	13
Howard Walter	460	00
John Woodbury	4,878	47
John Woorster	696	67
Fobes, Wight & Co.	16,530	22
Oswald A. Wills	81	82
Wiggin & Wood	304	72
E. D. Wiggin	62	30
J. H. Whittaker	8,027	94
H. Bigelow Williams	13,962	02
Young, Thayer & Co.	40,254	24
Pinkham & Corey	30,000	00
	$2,388,617	21

(It is agreed that this witness may be recalled for cross-examination at the election of complainants.)

LINUS M. PRICE.

Attest: JOHN G. STETSON, *Examiner.*

133 & 134 Cross-examination of Linus M. Price is waived by the complainants.

It is agreed that the Charlestown Five-Cent Savings Bank, on Sept. 30, 1881, bought of certain holders of the old stock of the Pacific National Bank their rights to eighty shares of the new increase voted Sept. 13, 1881.

It is agreed that the questions and answers in this case are subject to all legal objections by either party the same as if taken at the time of their being put and given, except objections to matters of form.

Attest: JOHN G. STETSON,
Examiner.

135 *Prayer for Reversal.*

Circuit Court of the United States, District of Massachusetts. In Equity.

CHARLESTOWN FIVE-CENT SAVINGS BANK
v.
LINUS M. PRICE, Receiver. } No. 2100.

To the honorable the justices of the Supreme Court of the United States:

Respectfully shows to your honors the appellant, which is the complainant in the above-entitled cause, that it filed its bill of complaint in said circuit court on June 8, 1885, wherein it averred that it had in equity fully satisfied and extinguished a certain alleged liability which the defendant was at the time of the filing of said bill seeking to enforce against the complainant by an action at law instituted and still pending in said circuit court, and wherein it prayed that the defendant might be enjoined from further prosecuting said action at law.

The defendant filed his answer to said bill on June 8, 1885, and issue was duly joined thereon by the complainant's replication filed on June 11, 1885.

The cause came on to be heard by said circuit court upon the pleadings and proofs and was argued by counsel for the respective parties; and upon consideration thereof a final decree was
136 entered by said circuit court ordering the complainant's bill to be dismissed.

The appellant being aggrieved, and having in open court appealed from the whole of said decree of the circuit court of the United States, respectfully prays that the decree of said circuit court and the bill, answer, pleadings, agreed statement of facts, evidence, and proceedings in said cause may be sent to the Supreme Court of the United States, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed, and such other decree made as to said Supreme Court shall seem just.

And this appellant assigns for error in said judgment and decree

of the circuit court that the circuit court ought to have held and adjudged that the complainant had in equity satisfied and extinguished the alleged liability which the defendant was seeking to enforce against it in said action at law and ought to have restrained the defendant from further prosecuting said action against the complainant, and that the circuit court erred in not so doing.

By BENJAMIN N. JOHNSON,
Of Counsel for Complainant.

137 UNITED STATES OF AMERICA, *Massachusetts District*, } ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record and all proceedings in the cause in equity entitled Charlestown Five-Cent Savings Bank, complainant, *v.* Linus M. Price, receiver, defendant, in said court determined.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this fifth day of October, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and tenth.

[Seal of the Circuit Court, Massachusetts.]

JOHN G. STETSON, *Clerk.*

138 *Bond to Party on Appeal.*

Know all men by these presents that we, the Charlestown Five-Cents Savings Bank, a corporation duly created by and organized and doing business under the laws of the State of Massachusetts, of Boston, in said State, as pri-cipal, and Phinehas J. Stone and Benjamin F. Stacey, both of said Boston, as sureties, are held and firmly bound unto Linus M. Price, a citizen of the State of New Jersey, commorant at said Boston, receiver of the Pacific National Bank of Boston, in the full and just sum of five hundred dollars, to be paid to the said Linus M. Price, receiver, his certain attorneys, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the eighth day of September, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at a circuit court of the United States, within and for the district of Massachusetts, in a suit in equity depending in said court between the said Charlestown Five-Cents Savings Bank, complainant, and the said Linus M. Price, receiver, defendant, decree was rendered against the said complainant, and the said complainant having obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said defendant citing and admon-

ishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said complainant shall prosecute its said appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

CHARLESTOWN FIVE-CENTS
SAVINGS BANK, [L. S.]
By AMOS STONE, *Treasurer.* [L. S.]
PHINEHAS J. STONE. [L. S.]
BENJAMIN F. STACEY. [L. S.]

Signed, sealed, and delivered in presence of—
ALLIETTA A. ANDERSON,
To all.

Approved:
LE BARON B. COLT,
U. S. Circuit Judge.

A true copy of the bond taken by the judge at the time of allowing the appeal named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest: JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

Endorsed on cover: Massachusetts C. C. U. S. No. 1200. The Charlestown Five-Cent Savings Bank, appellant, *vs.* Peter Butler, receiver of the Pacific National Bank of Boston. Filed November 6, 1885.

118-655

Office Supreme Court U. S.
FILED
OCT 11 1886
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. 792.

THE CHARLESTOWN FIVE-CENT SAVINGS BANK, *Appellant*,

v.

PETER BUTLER, *Receiver*.

No. 823.

THE CHARLESTOWN FIVE-CENT SAVINGS BANK, *Plaintiff in Error*,

v.

PETER BUTLER, *Receiver*.

BRIEF FOR THE CHARLESTOWN FIVE-CENT SAVINGS BANK.

GENERAL STATEMENT OF THE CASE.

For about two years prior to Sept. 13, 1881, the Pacific National Bank, of Boston, had been doing a general banking business in Boston, Mass., with a capital stock of $500,000.

Equity Record, p. 12.
Law Record, p. 8.

The articles of association of the bank provide that "the capital may be increased *according to the provisions of Section* 5142 *of the Revised Statutes* to any sum not exceeding ten hundred thousand dollars."

Equity Record, Exhibit 1, p. 20.
Law Record, Exhibit 1, p. 14.

Section 5142 of the Revised Statutes provides that "No increase of capital shall be valid until the whole amount of such increase is paid in, and notice thereof has been transmitted to the Comptroller of the Currency, and his certificate obtained specifying the amount of such increase of capital stock, with his approval thereof, and that it has been duly paid in as part of the capital of such association."

On Sept. 13, 1881, the directors of the Pacific National Bank voted to increase the capital to $1,000,000.

Equity Record, p. 12; Exhibit 3, p. 24.
Law Record, p. 8; Exhibit 3, p. 19.

The following notice was thereupon sent to the stockholders of the bank: —

PACIFIC NATIONAL BANK, 105 Devonshire Street,
BOSTON, Sept. 13, 1881.

At a meeting of the directors of this bank, held this day, it was "*Voted*, That the capital of this bank be increased to one million dollars, and that stockholders of this date have the right to take the new stock at par in equal amounts to that now held by them." Subscriptions to the new stock will be payable Oct. 1. Parties desiring to anticipate will be allowed interest to that date, at four per cent per annum.

J. M. PETTENGILL, *Cashier*.

Equity Record, p. 12; Exhibit 4, p. 24.
Law Record, p. 8; Exhibit 4, p. 19.

This notice was received by the appellant and plaintiff in error, the Charlestown Five-Cent Savings Bank, which held sixty shares of the stock of the National Bank. The savings bank then purchased of certain holders of the stock in the National Bank their rights to subscribe for and take eighty additional shares of the increase to $1,000,000, voted Sept. 13, 1881. Late in September, 1881, the savings bank subscribed for and paid for one hundred and forty shares of the $500,000 increase voted Sept. 13, 1881. When the savings bank paid for the one hundred and forty shares of such increase between Sept. 25 and Oct. 1, it received the following receipt: —

PACIFIC NATIONAL BANK, BOSTON,
Oct. 1, 1881.

$14,000.

Received of Charlestown Five-Cent Savings Bank, fourteen thousand dollars, on account of subscription to new stock.

J. M. PETTENGILL, *Cashier*.

Equity Record, p. 81; Exhibit 1, p. 89.
Law Record, p. 59.

The savings bank received, upon the surrender of this receipt, a certificate for one hundred and forty shares of new stock, dated Oct. 1, 1881, and issued about the time of its date.

Equity Record, p. 81.
Law Record, p. 59.

Nov. 18, 1881, the bank became unable to meet its debts and liabilities, failed to redeem its circulating notes, and thereupon closed its doors to business.

Equity Record, p. 12.
Law Record, p. 8.

At the time of the failure, Nov. 18, 1881, the whole amount of the increase of capital of $1,000,000, to which the Charlestown Five-Cent Savings Bank had subscribed, had not been taken or paid in, and it never was thereafter taken or paid in, and no notice was ever transmitted to the Comptroller of the Currency that it had been taken or paid in. The Comptroller never issued a certificate, stating that the capital stock had been increased to the amount of $1,000,000, as voted Sept. 13, 1881, nor did said Comptroller ever certify his approval of such increase, or that it had been duly paid in as a part of the capital of the bank. No action whatever was at any time taken by the Comptroller respecting an increase of stock to $1,000,000.

Equity Record, p. 12.
Law Record, p. 8.

At the time the Charlestown Five-Cent Savings Bank received its certificate for one hundred and forty shares of the $500,000 increase, it had no knowledge or information that said increase had not all been taken and paid in; nor at the time the savings bank paid for the one hundred and forty shares of said increase and received a certificate therefor, did it have any knowledge or information that the Pacific National Bank was insolvent. Said savings bank neither subscribed for, agreed to take, nor paid for, any stock in the Pacific National Bank after its failure, Nov. 18, 1881.

Equity Record, p. 84.
Law Record, p. 60.

In fact, only $461,300 of the increase of $500,000 was ever taken, all of which $461,300 was paid in on account of subscriptions to the proposed increase to $1,000,000, voted Sept. 13, 1881.

This whole amount of $461,300 was used by the bank in its business, and at the time of the failure, Nov. 18, 1881, *had all been lost.*

Equity Record, pp. 17, 18.
Law Record, pp. 8, 9, 13.

When the bank failed, Nov. 18, 1881, it owed over $3,000,000 in excess of its assets, and was in fact deeply and hopelessly insolvent.

Indeed, as far back as Sept. 13, 1881, when the directors voted to increase the capital to $1,000,000, the entire capital of the bank had been lost, and it was then insolvent. This condition of the bank was misstated to or concealed from the stockholders at the time they were induced to subscribe to the increase of $1,000,000.

Equity Record, pp. 16, 17, 18.
Law Record, pp. 9, 13.

On the same day that the bank failed, Nov. 18, 1881, Daniel Needham, a duly appointed examiner of national banks, was placed, by the Comptroller of the Currency, in exclusive charge and possession of the bank and all its funds, assets, records and books, and he remained in the exclusive charge and possession of the same, acting under the direction of the Comptroller of the Currency, for a period of four months. The directors of the bank, in the mean time, had no possession or control over its assets or the money received or paid out on account of the bank, except under the supervision, control and authority of said Needham. During all this time the doors of the bank were closed to business.

Equity Record, p. 13.
Law Record, p. 9.

Soon after the failure of the bank, and before Dec. 13, 1881, the Comptroller of the Currency was informed that the bank was in a

most precarious condition and insolvent, owing at least $961,300 more than the value of its assets.

Equity Record, p. 13.
Law Record, pp. 9, 59.

Before Dec. 13, 1881, the Comptroller was also informed of the vote of the directors which had been passed Sept. 13, 1881, to increase the capital of the bank to $1,000,000, and that the full amount of that increase had not been subscribed for, when the bank suspended in November. He was also informed that the $461,300, which had been paid in on subscriptions to the increase to $1,000,000, had all been lost.

Equity Record, p. 13.
Law Record, pp. 9, 59.

At a conference held before Dec. 13, 1881, between the Comptroller of the Currency, certain representatives of the directors and William J. Best, who was a large creditor, the question of what should be considered the capital of the bank was presented to the Comptroller and discussed, and the conclusion was reached that such a vote as that of Dec. 13, 1881, hereinafter set forth, should be passed by the directors, that the Comptroller should then be notified that the capital had been increased to $961,300, and should thereupon issue to the bank his certificate of increase to that amount.

Equity Record, p. 65.
Law Record, p. 59.

In pursuance of such conclusion, on Dec. 13, 1881, when the doors of the bank were closed to business, and when it and all its assets were in the exclusive charge and possession of Daniel Needham, agent and servant of the Comptroller of the Currency, as aforesaid, and acting under his direction, the directors of the bank passed the following vote: —

Voted, That whereas it was voted by this board, on the thirteenth day of September last, that the capital of this bank be increased to $1,000,000, and that stockholders of this date have the right to take the new stock at par in equal amount to that held by them;

And whereas, the stockholders were duly notified of said vote,

and also, that subscriptions to the new stock would be payable Oct. 1;

And whereas, $461,300 of said new stock has been taken and paid in;

And whereas, $38,700 thereof has not been taken and paid in;

Voted, That said $38,700 of said stock be and is hereby cancelled and deducted from said capital stock of $1,000,000, and that the paid-up capital stock of this association amounts to $961,300.

Voted, That the Comptroller of the Currency be notified that the capital of this association has been increased in the sum of $461,300, and that the whole amount of said increase has been paid in as part of the capital of this association, and that he be requested to issue his certificate of said increase to this association, according to law.

Equity Record, p. 13.
Law Record, pp. 9, 10.

The same day, J. M. Pettengill, cashier of the bank, acting under the directors, and upon the suggestion of the Comptroller that such a certificate should be sent to him, sent the following certificate sworn to by said cashier to the Comptroller of the Currency: —

PACIFIC NATIONAL BANK OF BOSTON,
Dec. 13, 1881.

To the Comptroller of the Currency, Washington, D. C.:

It is hereby certified that the capital stock of "The Pacific National Bank of Boston" has been increased pursuant to the articles of association of said bank, in the sum of four hundred and sixty-one thousand three hundred dollars, all of which has been paid in, and that the paid-up capital stock of said bank now amounts to nine hundred sixty-one thousand three hundred dollars.

[SEAL] J. M. PETTENGILL, *Cashier.*

Equity Record, p. 14.
Law Record, p. 10.

Dec. 16, 1881, the Comptroller of the Currency, knowing that the bank was insolvent and that its capital of $500,000 was all lost, and knowing further that the $461,300 paid into the bank on account of subscriptions to the increase of stock to $1,000,000, was all lost, and without in any way consulting the Charlestown Five-Cent Savings Bank, and the other subscribers to that increase, and without its or

their consent or knowledge, sent to the directors of the bank the following certificate: —

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, Dec. 16, 1881.

Whereas, satisfactory notice has been transmitted to the Comptroller of the Currency that the capital stock of "The Pacific National Bank of Boston, Mass.," has been increased in the sum of $461,300, in accordance with the provisions of its articles of association, and that the whole amount of such increase has been paid in.

Now, it is hereby certified that the capital stock of "The Pacific National Bank of Boston, Mass.," aforesaid, has been increased as aforesaid in the sum of $461,300; that said increase of capital has been paid into said bank as a part of the capital stock thereof; and that the said increase of capital is approved by the Comptroller of the Currency. In witness whereof, I hereunto affix my official signature.

[SEAL] JOHN JAY KNOX, *Comptroller.*

Equity Record, pp. 13, 14.
Law Record, pp. 9, 10.

The very same day that the Comptroller thus attempted by his certificate to create new stock to the amount of $461,300, attempting thereby to change the position of the subscribers to the $500,000 increase from that of creditors to that of stockholders, with a further certain liability to the amount of $461,300, he sent (apparently by the same mail) to the bank, still in his possession, the following communication: —

WASHINGTON, Dec. 16, 1881.

The Pacific National Bank of Boston, Massachusetts:

The entire capital stock of the Pacific National Bank of Boston, Massachusetts, amounting to nine hundred and sixty-one thousand three hundred dollars ($961,300), *having been lost*, notice is hereby given to said bank, under the provisions of Section 5205 of the Revised Statutes of the United States, to pay the deficiency in its capital stock by an assessment of one hundred (100) per cent upon its shareholders *pro rata* for the amount of capital stock held by each, and that if such deficiency shall not be paid, and said bank shall refuse to go into liquidation, as provided by law, for three months after this notice shall have been received by it, a receiver may be appointed to close up the business of the association, accord-

ing to the provisions of Section 5234 of the Revised Statutes of the United States.

In testimony whereof, I have hereto subscribed my name, and caused my seal of office to be affixed to these presents at the Treasury Department, in the city of Washington and District of Columbia, this sixteenth day of December, A. D. 1881.

[SEAL] JOHN J. KNOX,
Comptroller of the Currency.

Equity Record, pp. 14, 15.
Law Record, pp. 10, 11.

There was no vote of the stockholders of the bank or of the subscribers to the increase to $1,000,000, relating to the increase or reduction of the capital stock of the bank. No opportunity was ever given to the stockholders of the bank to subscribe for shares in an increase of $461,300, in accordance with the requirements of the Articles of Association.

Equity Record, p. 14.
Law Record, p. 10.

The only meeting of the stockholders of the bank held after the annual meeting of Jan. 11, 1881, was the annual meeting held Jan. 10, 1882. The notice of this meeting, published in the Boston *Daily Advertiser*, was as follows: —

PACIFIC NATIONAL BANK.

The annual meeting of the stockholders of this bank for choice of directors and for any other business that may legally come before them, will be held at their banking rooms, 105 Devonshire Street, on Tuesday, Jan. 10, 1882, at 11 o'clock A. M.

J. M. PETTENGILL, *Cashier.*

Equity Record, p. 15.
Law Record, p. 11.

The Charlestown Five-Cent Savings Bank did not have any notice of this annual meeting except the foregoing notice published in the Boston *Advertiser*. One of the trustees was present at the early part of the meeting, but while he was there he heard and learned nothing except that the bank was in a very bad condition; and he thereupon left the meeting. He did not vote or take any part in its

proceedings, and he made no report to the trustees of the savings bank.

Equity Record, pp. 84, 90, 91, 92.
Law Record, p. 60.

Some time after Jan. 10, 1882, the savings bank received notice of an assessment of one hundred per cent upon two hundred shares of stock in the Pacific National Bank, for which the savings bank held certificates. Mr. Stone, the president of the savings bank, and Mr. Thompson, one of its trustees, called upon the examiner, Mr. Needham, who was still in possession of the bank, and inquired of him as to the effect of the payment of the assessment. Being assured by Needham that the payment of the assessment would relieve the savings bank from further liability, and relying upon his statement as that of a government officer, and believing his statement to be true, the savings bank paid $20,000, March 18, 1882, and had the following indorsement made upon each of its certificates: —

BOSTON, March 18, 1882.

An assessment of one hundred per cent has been paid on this certificate.

E. C. WHITNEY, *Cashier.*

Equity Record, pp. 82, 83, 90.
Law Record, p. 60.

At the time of this payment, the Pacific National Bank and all moneys received by it were in the exclusive charge of the Comptroller, acting through Needham, his agent.

Equity Record, p. 13.
Law Record, pp. 8, 9.

The Charlestown Five-Cent Savings Bank made this payment for the purpose of discharging its liability as a stockholder for the debts of the bank. It believed this payment would discharge that liability, or it would not have made it.

Equity Record, pp. 83, 84.
Law Record, p. 60.

The Charlestown Five-Cent Savings Bank did not know at the time of this payment, nor was it ever in any way informed, until after the receiver had been appointed, that the increase of capital from $500,000 to $1,000,000, to which it had subscribed in September, 1881, had not all been taken and paid in; but it supposed and it believed that the capital had been validly increased to $1,000,000. It was not until after the receiver was appointed that it was informed of the action of the directors on Dec. 13, 1881, or of that of the Comptroller of the Currency on Dec. 16, 1881, purporting to fix the capital stock at $961,300.

Equity Record, p. 83.
Law Record, p. 60.

It had no information until the taking of the evidence in these cases that its name appeared in any way on the books or records of the bank, as a holder of the new stock.

Equity Record, p. 84.
Law Record, p. 60.

It does not appear that any register or list of stockholders was ever kept in accordance with Section 5210 of the Revised Statutes; nor does it appear that the stock ledger of the bank, so called, was ever seen by, or its contents made known to, any creditor of the bank, or any member of the public.

On March 18, 1882, the amount paid on the assessment of one hundred per cent, including the $20,000 paid by the Charlestown Five-Cent Savings Bank, was $643,000.

This entire sum was paid by the stockholders of the bank, and *by some of* the subscribers to the increase voted Sept. 13, 1881, while the bank and all its receipts and assets were in the possession and under the control of Needham, the representative of the Comptroller of the Currency.

Equity Record, pp. 80, 13.
Law Record, pp. 9, 14.

On March 18, 1881, this entire fund of $643,000 was therefore in the hands of and under the control of said Needham.

Equity Record, p. 13.
Law Record, p. 9.

The bank was then in fact deeply and hopelessly insolvent.

Equity Record, pp. 16, 18, 77.
Law Record, pp. 12, 13.

On March 18, 1882, the Comptroller of the Currency, without consulting the Charlestown Five-Cent Savings Bank, or the stockholders of the bank, or the subscribers to the increase to $1,000,000, or those who had paid in the $643,000 on account of the assessment, surrendered the bank and its assets to the directors, who opened the bank to business. The directors found, however, that they could do and did in fact do very little business in banking.

Equity Record, p. 17.
Law Record, p. 13.

From March 18 to May 20, the indebtedness of the bank was paid off and reduced over $2,000,000.

Equity Record, p. 16.
Law Record, p. 12.

The whole amount paid by the stockholders as a contribution towards the payment of the debts of the bank by voluntary assessment, viz., $742,800, including the $20,000 paid by the Charlestown Five-Cent Savings Bank, was applied to the payment of the debts of the bank.

Equity Record, p. 18.
Law Record, p. 13.

There were new liabilities contracted subsequent to March 18, 1882, to the amount of $200,000, but the bank after that time made no new losses.

Equity Record, pp. 16, 19.
Law Record, pp. 12, 13.

The receiver was appointed May 22, 1882. All the assets, which were in the bank Nov. 18, 1881, came into the receiver's hands, when he took possession of the bank, except such as had been collected and applied to the payment of the debts and expenses of the

bank, and such as had been surrendered on compromise in the settlement of doubtful assets.

Equity Record, p. 16.
Law Record, p. 12.

On Nov. 27, 1882, six months after the appointment of the receiver, the Comptroller of the Currency made another demand or requisition for $961,300 upon the stockholders of the bank, and upon the subscribers to the increase to $1,000,000, being an assessment of one hundred per cent upon what was alleged and is alleged by the receiver to be the capital of the bank. The receiver brought suits to enforce this assessment March 14, 1883.

Equity Record, p. 18.
Law Record, p. 13.

In the suit brought against the Charlestown Five-Cent Savings Bank, the receiver alleges it to be the holder of two hundred shares of the stock of the Pacific Bank, and seeks to enforce against it as such a payment of $20,000.

To enjoin the prosecution of the suit so instituted against it, the Charlestown Five-Cent Savings Bank caused to be brought in the Circuit Court for the same district in which the suit itself was pending the bill in equity, the whole record of which is now before this court upon the Charlestown Five-Cent Savings Bank's appeal. In this bill in equity, it prays that the receiver may be enjoined from the further prosecution of said suit against it, and also prays for such other and further relief as to the Court may seem meet.

The claim set forth in the bill in equity, and still urged in this court as the ground for such equitable relief, is that the contribution by the Charlestown Five-Cent Savings Bank, on March 18, 1882, of an amount equal to the par value of the stock held by it, towards a fund which was actually used in the payment of the debts of the Pacific Bank, said bank then being insolvent, constituted in equity a satisfaction and extinguishment of its liability as a stockholder for the debts of the bank. It is further set forth in said bill, and still urged as an additional ground for equitable relief, that by the payment of the $14,000, made by the Charlestown Five-Cent Savings

Bank upon the one hundred and forty shares of alleged new stock, which in fact never had any legal existence, and on which the Charlestown Five-Cent Savings Bank never incurred any liability, it really contributed towards a fund actually used for the payment of the debts of the bank an amount to equal to over three hundred per cent of the stock held by it.

The Charlestown Five-Cent Savings Bank also defended the suit brought against it by the receiver, the whole record of which has been brought before this court by writ of error, upon two grounds:

First. That it was not at the time of the appointment of the receiver, or at any time, the holder of two hundred shares of the stock of the Pacific National Bank, but was in fact and in law a holder of only sixty shares thereof. Its claim is that the attempt on the part of the directors and the Comptroller of the Currency in December, 1881, to fix the capital stock of the bank at $961,300, was contrary to law and void; that the alleged one hundred and forty shares of new stock on which it is sued never had any legal existence; and that it, by virtue of its subscription in September, 1881, for one hundred and forty shares in the then proposed increase of capital from $500,000 to the $1,000,000, and by its other acts, never became liable on account of the debts of the Pacific National Bank, beyond its liability as the holder of sixty shares of valid stock.

Second. That by its contribution, March 18, 1882, of an amount equal to the par value of all the stock ever alleged to be held by it towards a fund which was all used in the payment of the debts of the bank, the bank then being insolvent, it in law discharged its liability as a stockholder in said bank, and should therefore have judgment in its favor in the suit pending against it.

SPECIFICATIONS OF ERRORS.

In the Equity Appeal, the error in the decree of the Circuit Court, which is here relied upon and urged, is that the Circuit Court ought to have held and adjudged that the contribution by the Charlestown Five-Cent Savings Bank, March 18, 1882, of an amount equal to the par value of its stock in the Pacific National Bank, towards a fund which was all used in the payment of the debts of the bank,

the bank then being insolvent, constituted in equity a performance, satisfaction and extinguishment of its liability as such stockholder, and that the Circuit Court ought to have restrained the receiver from further prosecuting the suit instituted by him against said Charlestown Five-Cent Savings Bank, and that the Circuit Court erred in not so doing.

The Circuit Court further erred in not granting to the Charlestown Five-Cent Savings Bank, in whole or in part, the relief prayed for in its said bill of complaint.

As plaintiff in error, the Charlestown Five-Cent Savings Bank relies upon and urges all the errors specified in the Assignment of Errors, which make a part of the record of the Writ of Error, beginning on page 67 thereof.

These errors are as follows: —

1. The Circuit Court erred in giving judgment for the defendant in error on the facts found by the court and in not giving judgment thereon to the plaintiff in error.

2. There was error in each of the rulings of said court, admitting in evidence, each one severally, the records, papers and documents, copies of which are annexed to and a part of the "Statement of Facts found by the Court," and which records, papers and documents are, respectively, Exhibits 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16 and 17 in the record of the Writ of Error.

3. There was error in the ruling of said court, admitting in evidence what was assumed to be a record of the doings of a meeting of the stockholders of said Pacific National Bank, held Jan. 10, 1882, a copy of which is annexed to said findings of fact by the court as "Exhibit 9," except so much thereof as is a record of the election of a board of directors of said bank, which is as follows: —

"The following directors were chosen by a stock vote of 4,727 shares against 80 scattering votes: Lewis Coleman, of Boston; John Shepard, of Boston; M. Dyer, Jr., of Boston; M. P. Springer, of Newton; J. H. Whitaker, of Malden; Edwin Ray, of Newton; J. H. Sanborn, of Newton; E. M. Fowle, of Newton; George H. March, of Watertown; Arthur Sewall, of Bath; John E. Cassidy, of Boston; John Fallon, of Lawrence." [The exhibits referred to in the two preceding specifications of error cover forty

pages of the record of the Writ of Error, and are not here set out because of their voluminous character.]

4. There was error in the ruling of said court, admitting in evidence the following vote of the directors of said Pacific National Bank, passed Dec. 13, 1881, to wit: —

Voted, that whereas it was voted by this board, on the thirteenth day of September last, that the capital of this bank be increased to one million dollars, and that stockholders of this date have the right to take the new stock at par in equal amount to that held by them;

And whereas the stockholders were duly notified of said vote, and also that subscriptions to the new stock would be payable Oct. 1;

And wheareas $461,300 of said new stock has been taken and paid in;

And whereas $38,700 thereof has not been taken and paid in;

Voted, that said $38,700 of said stock be, and is hereby, cancelled and deducted from said capital stock of $1,000,000, and that the paid-up capital stock of this association amounts to $961,300.

Voted, that the Comptroller of the Currency be notified that the capital of this association has been increased in the sum of $461,300, and that the whole amount of said increase has been paid in as part of the capital of this association, and that he be requested to issue his certificate of said increase to this association according to law.

5. There was error in the ruling of said court admitting in evidence the following certificate of J. M. Pettengill, the cashier of said bank, to the Comptroller of the Currency, which is dated Dec. 13, 1881, to wit: —

PACIFIC NATIONAL BANK OF BOSTON,
Dec. 13, 1881.

To the Comptroller of the Currency, Washington D. C.

It is hereby certified that the capital stock of "The Pacific National Bank of Boston" has been increased pursuant to the Articles of Association of said bank, in the sum of four hundred and sixty-one thousand three hundred dollars, all of which has been paid in, and that the paid-up capital stock of said bank now amounts to nine hundred and sixty-one thousand three hundred dollars.

[SEAL] J. M. PETTENGILL, *Cashier.*

6. There was error in the ruling of said court, admitting in evidence the following certificate of John J. Knox, Comptroller of the Currency, dated Dec. 16, 1881, to wit: —

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, Dec. 16, 1881.

Whereas satisfactory notice has been transmitted to the Comptroller of the Currency that the capital stock of "The Pacific National Bank of Boston," Mass., has been increased in the sum of four hundred and sixty-one thousand three hundred dollars, in accordance with the provisions of its Articles of Association, and that the whole amount of such increase has been paid in:

Now, it is hereby certified that the capital stock of "The Pacific National Bank of Boston," Mass., aforesaid, has been increased, as aforesaid, in the sum of four hundred and sixty-one thousand three hundred dollars; that said increase of capital has been paid into said bank as a part of the capital stock thereof, and that the said increase of capital is approved by the Comptroller of the Currency.

In witness whereof I hereunto affix my official signature.

[SEAL] JOHN J. KNOX, *Comptroller.*

7. There was error in the ruling of said court, admitting in evidence the facts introduced by the receiver relating to the suits brought by three creditors after March 18 and before May 20, 1882, as stated in facts found by the Court (p. 13, record of Writ of Error).

8. There was error in the finding of said court, as a conclusion of law from the facts found by it, that the plaintiff in error was the owner of the number of shares of stock in said Pacific National Bank on May 20, 1882, and on May 22, 1882, as declared in that behalf of the declaration.

9. There was error in the rulings of said court, in each and every refusal to make the several and separate rulings requested by the plaintiff in error in its prayers therefor submitted to the court after the evidence introduced by both parties was closed, to wit: —

(1.) In refusing to rule as requested, "that by reason of the plaintiff in error having taken one hundred and forty shares of the $500,000 increase of the capital of the Pacific National Bank voted Sept. 13, 1881, and its payment thereof, and receipt and retention of a certificate of stock for that amount, it cannot be held as a stockholder in this action unless it appears that the whole amount of the $500,000 increase voted was, either before or subsequent to its reception of said certificate, taken and paid in, and the increase of stock to that amount approved by the Comptroller of the Currency."

(2.) In refusing to rule as requested, "that the vote of the directors of the Pacific National Bank, Sept. 13, 1881, that the capital of that bank be increased to $1,000,000, and the vote of the directors of said bank, Dec. 13, 1881, in which the attempt was made to limit the increase of the capital to $461,300, and to fix the whole capital at $961,300, and the approval thereof by the Comptroller of the Currency by his certificate dated Dec. 16, 1881, did not constitute a legal and valid increase of the capital stock of said bank to $961,300."

(3.) In refusing to rule as requested, "that if the action of the directors of said bank and the Comptroller of the Currency, set forth in the preceding request, constituted a valid increase of the capital stock of said bank of $461,300, and to the amount of $961,-300, the plaintiff in error cannot be held in this action as a stockholder in said increase of $461,300 by reason of its having taken one hundred and forty shares of the increase of $500,000 voted Sept. 13, 1881, and its payment for those shares and the reception of a certificate for said one hundred and forty shares thereof prior to the failure of the bank, Nov. 18, 1881."

(4.) In refusing to rule as requested, "that the retention by the plaintiff in error of said certificate for one hundred and forty shares of said $500,000 increase until the final closing of the bank, May 20, 1882, and the payment of the assessment of one hundred per cent upon the par value of said supposed shares, which was made by it March 18, 1882, were not sufficient in this case to constitute or hold it as an owner of said shares if it did not know, and had never been informed, of the said action of the directors, Dec. 13, 1881, or of the said action of the Comptroller, Dec. 16, 1881, certifying the stock at $961,300, until after the receiver was appointed, May 22, 1882, and did not, until after that time, know, and had never been informed, that the increase of said capital stock to $1,000,000 had not all been taken and paid in."

(5.) In refusing to rule as requested, "that if the votes of the directors of Sept. 13 and Dec. 13, 1881, and the certificate of the Comptroller dated Dec. 16, 1881, did not constitute a valid increase of the capital of the bank to $961,300, that attempted increase was

not validated by subsequent ratifying acts (if such acts there were), by part only of those who had subscribed for and paid in the $461,-300, under the vote to increase $500,000."

(6.) In refusing to rule as requested, "that the amount of the capital stock could not be increased by ratification to a sum less than $961,300; and if the plaintiff in error did acts which might constitute ratification on its part, this would not make the one hundred and forty shares of proposed new stock taken up and paid for by it legal stock unless all the other holders of shares in the same $461,-300, part of the said $500,000 increase, to the amount which had been approved ($461,300), also ratified the increase."

(7.) In refusing to rule as requested, "that the payment by the plaintiff in error, March 18, 1882, to the directors of the Pacific National Bank, which was then insolvent and its capital stock all lost, and was in the possession and under the control of Needham, of an amount equal to the par value of the stock which it owned or of which it had certificates, which was applied towards the payment of the indebtedness of said Pacific National Bank, if made with the understanding and belief on its part that it would discharge it from its liability under the statute to contribute towards the payment of the debts of the bank a sum equal to the par value of its stock, constituted a satisfaction and discharge of that liability, and proof of it is a good defence to this action."

(8.) In refusing to rule as requested, "that the payment by the plaintiff in error, March 18, 1882, of an amount equal to the par value of its shares of stock, or supposed stock, in the Pacific National Bank and of which it held certificates, to the parties and under the circumstances stated in the preceding request, which was applied as therein supposed, discharged the plaintiff in error from its liability, if any existed, to contribute further towards the payment of all debts of the bank which were contracted before such payment."

(9.) In refusing to rule as requested, "that if the plaintiff in error paid to Daniel Needham, the bank examiner, while he was in charge of the bank, or to any person acting under his authority in the reception of the payment, a sum of money equal to the par value of all the shares of said supposed stock held by it in said Pacific National Bank, which was applied in payment of the debts, contracts

and engagements of the bank, it constituted a discharge of its liability under the statute, and is a defence to this action."

(10.) In refusing to rule as requested, "that if the plaintiff in error paid the assessment upon all the shares held by it, which was voted at the assemblage of stockholders, Jan. 10, 1882, to Daniel Needham, while he was in possession and control of the bank, and all money received for the payment of its debts, or to any person authorized by him, such payment constituted a discharge of the plaintiff in error's liability under the statute, and is a defence to this action."

(11.) In refusing to rule as requested, "if the plaintiff in error, since the failure of the bank in November, 1881, has paid one assessment of an amount equal to the par value of the shares of said stock and supposed stock held by it, and such payment did not have the effect of restoring the value of its stock to it in any part, but was devoted to the payment of the debts, contracts and engagements of the bank, it is discharged from further liability, under whatever provision of law that assessment may have been made."

(12.) In refusing to rule as requested, that "the effect would be the same of a payment made under the circumstances stated in the foregoing request, if the assessment was made voluntarily by the stockholders upon themselves, without reference to any provision of the statute relating to making an assessment."

(13.) In refusing to rule as requested, "that if, after it was notified of the assessment referred to in these requests, the plaintiff in error received from Daniel Needham, the examiner, while he was in possession of the Pacific National Bank and all its assets, and while the moneys paid in to said bank were paid and received under his supervision and authority, assurances that the payment of that assessment would relieve it from all further liability under the statute to contribute towards the payment of the debts of the bank, and was influenced in part to pay the assessment by reason of such assurances, and did thereafterwards pay it to the bank while it was in Needham's possession, such payment is a satisfaction of its liability sought to be enforced in this action and is a defence to it."

10. There was error by said court in rendering judgment against the plaintiff in error for an assessment upon all the stock of which

it was alleged in the declaration to be the owner, because if judgment was authorized for the assessment upon any part of said alleged stock, it was only upon such stock held by the plaintiff in error as was created prior to Sept. 13, 1881.

11. There was error by said court in rendering judgment for any greater part of the assessment made by the Comptroller of the Currency against the plaintiff in error than the plaintiff in error's due proportion of the debts of said bank contracted subsequent to March 18, 1882.

ARGUMENT.

The appellant relies on two principal propositions: —

First. It is not a stockholder of the new stock.

Second. It has once paid its full liability.

I.

We deny that the character of holder of the new stock has attached to the appellant and plaintiff in error.

It contracted to take new stock in a bank whose capital should be a million dollars.

Pages 24, 81.

This agreement imposed no obligation to take shares of a smaller capital.

These engagements are as distinct as engagements to take stock in different banks.

Acceptance of certificates, entries on the books, payment of assessments, neither separately nor combined, clothe it with that character in fact, or estop it from denying it.

This is settled by the statute itself. There is a clear distinction between the system provided in the national banking law for the original formation of a corporation, and that provided for the increase of its capital.

Sections 5133–5141, 5168–5180, provide for the creation of a corporate life which comes into being when the articles of association are signed and filed. Its subsequent action will be binding upon the associates, although irregular. The departure from mere mandatory provisions can only be remedied by proceedings instituted by the government.

But Section 5412 expressly declares: "*No increase of capital shall be valid until the whole amount of such increase is paid in, and notice thereof has been transmitted to the Comptroller of the Currency, and his certificate obtained, specifying the amount of such increase of*

capital stock with his approval thereof, and that it has been duly paid in as a part of the capital of such association."

The appellant's subscription, payment, taking the certificate and the entry upon the books were mere preparation for or anticipation of the assuming the character of stockholder, when the whole amount should be subscribed, and the approval and certificate of the Comptroller obtained. They conferred no right and imposed no duty upon appellant, except to become a stockholder when the increase became valid, and imposed no obligation upon the bank except to admit it as a stockholder when the proceeding was complete.

If the Comptroller had withheld his approval altogether, surely appellant could not have been held as shareholder, for the single purpose of liability to previous debts and for no other purpose whatever.

> American Tube Works *v.* Boston Machine Co., 139 Mass. 5.
> Reed *v.* Boston Machine Co., 141 Mass. 454.

In the former case all the elements found here exist, with the additional fact that plaintiffs had actually received dividends on the illegal stock. Allen, J., says: "In all the cases which have come under our observation, where one has been held to be a stockholder by estoppel, there has been a legal creation of the capital stock."

There is no distinction in principle between an attempted increase of capital beyond the amount expressly limited in the charter, and an attempted increase, which the law expressly declares shall not be valid until the consent of the public officer who has control of the subject, be obtained.

The consent of the Comptroller takes the place of the legislative consent, which, in either case, would be sufficient to authorize an increase beyond the original limit.

The issue of the increase was, by the express terms of the statute, *ultra vires*.

In Scovill *v.* Thayer, 105 U. S. 143, it is held that in such case an alleged stockholder is not estopped by receiving certificates, attending corporate meetings, or by the fact that the corporation had held itself out as having increased capital, and so obtained increased credit.

The Court say: —

"The increased stock itself was void. It conferred on the holders no rights, and subjected them to no liabilities. If the stock of the first and second issues had been held by one set of holders, and the stock of the third and fourth by another, in a contest between them, the latter would have been excluded from all participation in the management of the company or in its profits. To decide that the holders of stock issued *ultra vires* have the same rights as the holders of authorized stock, is to ignore and override the limitations and prohibitions of the charter. We think it follows that, if the holder of such spurious stock has none of the rights, he can be subjected to none of the liabilities of the holder of genuine stock. His contract to pay for spurious shares is without consideration, and cannot be enforced. The corporation being absolutely without power to increase its stock above a certain limit, the acquiescence of the shareholder can neither give it validity, nor bind him or the corporation."

The acts of the stockholders, until the certificate of the Comptroller, are nothing more than propositions among themselves.

Charleston *v.* People's Nat. Bank, 5 Rich. So. Car. 103.

In all the cases cited on the other side, so far as we have examined them, the Court hold the stock valid, notwithstanding irregularities. If the corporations had been solvent and gone on, the stockholders, under the principle of those decisions, would have established their right to dividends and to vote. Here, it is clear that until after the certificate of the Comptroller, which was itself long after the facts relied on as an estoppel, no such relation to this corporation in respect to its new stock ever existed.

So far as the certificate is concerned, that is a strange estoppel which estops a person from denying that he is the owner of that which does not exist; that he is a stockholder of no stock. The reasoning of Scovill *v.* Thayer is fully applicable here. If there had been a dividend declared after the issue of these certificates and before the Comptroller's certificate, the old stockholders could have prevented the new ones from receiving it. If there had been a meeting, the old stockholders could have prevented the new ones from voting. There is no single privilege of a stockholder which

the holders of the certificates could have claimed after their issue, until the five hundred thousand dollars had been all paid in, and the Comptroller's certificate to the payment of the increase, and his approval thereof obtained.

Upton *v.* Tribilcock, 91 U. S. 45, Sanger *v.* Upton, 91 U. S. 56, Webster *v.* Upton, 91 U. S. 65, Chubb *v.* Upton, 95 U. S. 665, and Pullman *v.* Upton, 96 U. S. 328, deal only with the case of subscriptions obtained by fraud, or stock which the corporation had a right to issue, but issued irregularly, or stock *de facto* in corporations irregularly organized.

Neither party to the transaction understood the payment of the money, the certificates, or the entries, as conferring any rights upon anybody until the whole half million was paid, and the Comptroller's certificate obtained. They were mere acts of preparation or anticipation.

Certainly there must be some limit to an estoppel. The clerk of a bankrupt corporation cannot, by entering a name on the stock book for any number of shares he pleases, render the person named liable for all or any part of its debts. Could the cashier of this bank, by a stroke of his pen, charge any number of the richest men in Boston with shares to the amount of $1,000,000, and thereby render them liable for these debts?

The presumption arising from entry in a stock book does not apply when all the facts are before the court. No case can be conceived where a person, not a stockholder on all other facts, becomes one by putting his name on a book without his authority.

The certificate and entry in stock book must purport to be shares in some specific capital. There can be no such thing as a share, unless there be a unit which is shared. A numerator is without meaning unless there be a denominator. Until there has been a unit of capital duly created, there can be no such thing as an estoppel to deny holding shares therein.

If it were essential to our argument, we should respectfully ask the Court to reconsider the dictum of Mr. Justice Hunt, in Chubb *v.* Upton, 95 U. S. 665, 668, that "it not necessary to sustain the action against a subscriber, that there should have been a subscription for the whole amount named in the articles." If this be true to any

extent, we conceive it can be only true in cases where a corporation has begun business lawfully, might lawfully have limited its increase to the amount actually subscribed without the assent of any other authority, so that the subscriber would become a shareholder in a going concern, and where the circumstances attending the issue of the certificates immediately, show that to have been the intent of the parties. See cases collected in

1 Morawetz, Sect. 142.
Rensselaer Plank Road Co. *v.* Wetsel, 21 Barb. (N. Y.) 56.

But the present case is as if the subscription paper had itself contained the express condition that the bank would not admit the subscriber to the character of stockholder, until the whole amount should be subscribed.

Lexington R. R. *v.* Chandler, 13 Mich. 311.
Troy & Greenfield R. R. *v.* Newton, 8 Gray, 596.
Worcester & Nashua R. R. *v.* Hinds, 8 Cush. 110.
City Hotel *v.* Dickinson, 6 Gray, 586.
Boston & Barre R. R. *v.* Wellington, 113 Mass. 79.
Boston R. R. *v.* Pearson, 128 Mass. 445.

Creditors, in dealing with corporations, are bound to take notice of the limitations of their charters, and, *à fortiori*, of the limitations of the general law.

2 Morawetz, Private Corp., 849.
Scovill *v.* Thayer, 105 U. S. 143, 149.
Pearce *v.* Madison R. R., 21 How. 441, 443.
In re County Life Ass. Co., L. R., 5 Ch. App. 288.

The book produced by the receiver is not a stock register. It is a mere debt and credit account with the stockholder, p. 88.

Ins. Co. *v.* Hastings, 2 Allen, 398.

We come then to the action of the directors of Dec. 13, 1881, and the two certificates of the Comptroller, dated Dec. 16, 1881.

Dec. 13, 1881, the bank was wholly insolvent. Its capital was entirely gone, and its liabilities were more than three million dollars

in excess of its capital and assets. It failed to redeem its circulating notes, or to pay debts or depositors in the course of business. Its doors were closed (pp. 12, 13); its officers were excluded from all control of its affairs by the order of the Comptroller (p. 13).

Needham, the bank examiner, although not styled receiver in the order, was in fact executing the functions of receiver, and not of visitor or examiner, so far as his custody and control of the bank were concerned.

Rev. Stat. §§ 5240, 5241.

This was a clear case of insolvency, and these were clear acts of insolvency within the meaning of Sect. 5242. They were due and public notice to every shareholder and creditor that the power of the bank to deal in any manner with its assets, except to preserve them and to redeem bills, was gone. It could make no binding contract; even a seizure and sale of its property on an adversary suit would be void.

National Bank *v.* Colby, 21 Wall. 609.

The purpose to violate the provisions of Sect. 5242 would be inferred as matter of law from any payment or transfer of the property under these circumstances, and notice of such purpose be imputed to both parties.

This is very well stated in Pratt's digest of the National Bank Act in the note to Sect. 5242: "It is plain that a bank is bankrupt at the moment that it cannot pay legitimate demands upon it in current funds; and the very fact that when a demand is made, a bank offers something other than current funds, would appear to be presumptive evidence of insolvency. It is expected, from the very nature of the business, that a bank will always conduct its business so as to be prepared to meet all demands by immediate payment in money. In practice, however, it is often very difficult to determine the exact date of the insolvency, inasmuch as a bank may be really insolvent and yet be able to meet demands to some small extent in current funds; and it may be able, by disposing of its more easily liquidated assets, such as bonds, or the best of its bills receivable, to supply itself with current funds to meet considerable demands.

But while the exact moment of insolvency is extremely difficult to fix theoretically, still practically, in each actual case, there comes a time when the officers are aware they cannot continue business. *Usually, when they come to this conclusion, the institution closes its doors, and this act is the act of insolvency mentioned in the section.*

"It rarely, however, happens that a bank closes its doors, but it subsequently appears, by competent evidence, that for days, weeks, or months prior to the actual closure, the officers must have been aware that there was no hope for the institution, and they are not excusable because they permitted themselves to be led by false hopes, but it is presumed that things appeared to them as they would appear under like circumstances to competent business men. If it can be proved that after the institution was in such condition that competent bankers would have closed its doors, the officers paid out moneys, etc., all such acts would be null and void, and when creditors were paid in other than current funds, say in bills receivable or other unliquidated assets, such creditors would doubtless be considered to have been put on notice, and could be compelled to refund and await *pro rata* distribution."

Such being the case, the directors had no power to pass the vote fixing the capital at $961,300, and that whether the act be treated as an attempted reduction of the capital, which could only be effected by a two-thirds vote of the shareholders (Sect. 5143), or as a new and original attempt to increase.

It is clear they had no authority to reduce the capital: first, because that power only resides in the stockholders (Rev. St., § 5143); second, because the capital had never been lawfully increased to the point from which they were to reduce it.

Yet it seems clear that reduction and not increase was what they attempted by the vote of Dec. 13, 1881. After reciting the vote to increase to a million, and that the subscriptions were payable Oct. 1, and that "$461,300 of said new stock has been taken and paid in," they vote that "$38,700 of said stock be, and is hereby, cancelled and deducted from said capital stock of $1,000,000," etc. This purpose is further made clear by the fact that the transaction was illegal as an original increase, because there was no offer of the new

stock *pro rata* to holders of the old stock as the Articles of Association (Sect. 5, p. 16, and By-Law, Sect. 11, p. 17) require.

But this is of minor importance. The directors were at that date totally incompetent to bind the bank by the contract which the acceptance of a subscription or payment to stock implies.

The acceptance of a subscription and payment to the stock of a bank implies a contract on the part of the corporation to take the money and employ it in the business of banking. It implies a contract to give him a right as stockholder to his equal control and management of a banking business to be thereafter conducted. If it be an increase, it is a contract for a sale to him of a proportionate joint ownership of an existing capital then engaged and thereafter to be engaged in the business of banking. How can an agency make such a contract which could not lawfully pay a creditor other then a bill-holder a debt of twenty-five cents? If into the ordinary contract for the sale of goods on credit there enter the implied condition that the buyer shall keep his credit good till the transaction be complete, does not this condition enter into the authority of directors to hold third persons or bind their own corporations by contracts to continue the business?

On the same thirteenth day of December, 1881, the cashier sent to the Comptroller a certificate that the capital stock had been increased and the increase all paid in. In point of fact, not a dollar had at that time been subscribed or paid in toward any increase voted by the directors on that day. The subscribers to the new $500,000, under the former vote, might each of them have demanded that his money should be returned immediately on the passage of the vote fixing the amount at $461,300. Nothing, certainly, had yet happened which made any subscriber liable as shareholder.

On the same day the Comptroller issued his two certificates, one declaring that the new stock was all paid in, the other declaring that it was all gone, and directing an assessment (pp. 14, 15).

We submit that neither of these certificates had any validity whatever.

The Comptroller is not a judicial officer. He cannot bind any citizen by a decree or judgment. It is true, his certificate is conclusive upon the question whether a bank is duly organized, and

upon the question how much of the stockholders' liability needs to be enforced.

Kennedy *v.* Gibson, 8 Wall. 498.
Bank *v.* Kennedy, 17 Wall. 20.
Casey *v.* Galli, 94 U. S. 673.
Sanger *v.* Upton, 91 U. S. 56.

A person who has become a shareholder in a bank so far submits himself to the Comptroller's authority; and the enforcement of this submission is necessary for the due protection of the public.

But it cannot be claimed that the Comptroller can by his certificate impose upon persons the character of shareholders without their consent. Nor will it be doubted, we presume, that if the Comptroller be about to give such certificate illegally or contrary to the fact, any person who would be aggrieved thereby may have judicial process to restrain him.

United States *v.* Knox, 102 U. S. 422.

If, then, the act of the Comptroller be performed under such circumstances that it is impossible to apply for an injunction in advance, it must be that the facts may be shown in defence, especially in cases where no new rights have attached in consequence of reliance on his action.

The Comptroller could not lawfully certify to an increase of capital made illegally, for the reasons heretofore stated.

Nor could he properly and lawfully certify that the capital "had been increased in accordance with the provisions of the Articles of Association," and that "said increase of capital has been paid into said bank as a part of the capital stock thereof," or lawfully certify his approval of such increase, when the fact was at that moment known to him that the amount was all gone, that it never had been received as capital, but had been applied to the partial reduction of the indebtedness of a bank still insolvent.

The law will not stick at the phrase "has been duly paid in." It is the substance of an increase of capital to which he is authorized to certify. The fact that it is there, not the fact that it was paid

weeks or months ago, is the essential fact which he is to declare. It must be there as an existent, present fund, to which the public may trust in dealing with the bank, on the one hand, and which is to stand between the shareholders and their liability for debts on the other.

The Comptroller erred, therefore, in deeming himself authorized to certify that the capital had been increased.

He also erred in deeming that he had authority to require an assessment on this increase. The case of a capital "impaired by losses or otherwise," contemplated in Section 5205, does not exist where the capital is all gone and the bank is insolvent.

We claim that there is nothing in this case which creates an estoppel. The liability of the alleged shareholders must depend upon the actual facts, and not on any artificial presumptions.

There has been no change, except for their advantage, in the position of the old creditors. The estoppel can at best only be invoked in behalf of the new creditors, some $200,000 in amount, who contracted with the corporation during the brief period of resumption, and after the alleged increase in stock. Their rights, if any they have, can be preserved in the decree, if the Court think fit.

II.

Our second general proposition is that the liability of all the shareholders has been equitably discharged by the payment of the assessment.

This case is totally distinguishable, in this respect, from Scoville *v.* Thayer, 105 U. S. 141. In that case Thayer had subscribed for certain valid shares in a Kansas corporation, and had paid in a part of their par value. The company afterward undertook to increase its capital beyond the amount authorized by law, and he subscribed and partly paid for certain unauthorized stock. He had an agreement with the company that no further calls should be made upon him, which agreement was void as against an assignee of the company in bankruptcy. The Court held that, on a suit by such assignee to recover the unpaid balance due on his authorized stock, he could not set off the sums paid by him on the invalid stock.

Mr. Thayer's original subscription was, as between him and the representative of the creditors, a promise to contribute to a fund for their use. The money paid by him on the said stock not being applicable to the purpose for which it was intended, was, in the view most favorable for him, money received by the company to his use, constituting him an ordinary creditor to that amount. The Court say that "no call had been made for contribution on the valid stock, to which the amounts paid on the void stock could be said to apply. No call could have been made by the company under its agreement with the stockholders, unless to pay its creditors, and it does not appear that when the payments were made the company had any creditors." The money paid in that case never, so far as appears, benefited a creditor in the slightest degree. It may, so far as appears, have been paid for the purchase of a mine which proved worthless, or for working a mine which proved unprofitable.

See also

Sawyer *v.* Hoag, 17 Wallace, 610.
Sanger *v.* Upton, 91 U. S. 56.
Scammon *v.* Kimball, 92 U. S. 362.
Morgan *v.* Allen, 103 U. S. 498.

But in the case at bar, the money paid under a supposed liability went directly to reduce the volume of debts, as is expressly found by the Court under an assessment made for that sole purpose. The order by the Comptroller, and the voluntary consent by the supposed shareholder, to pay in one hundred per cent on the supposed capital, were an order and consent to pay that amount to the creditors, and actually accomplished that purpose. It was an actual performance of one obligation by parties who mistakenly supposed they were performing another. In form, it was an attempt to make good the capital. In fact, it was simply a reduction of the volume of debt.

The entire deficiency was never paid. Pursuant, therefore, to the notice of the Comptroller of Dec. 16, 1881, the receivership therein stated went on. The question with which we have now to deal is the same as if one shareholder only had brought to the officer his assessment on the full amount of his stock, paid it over to the representative of the government in charge, been assured by him

that it was in full discharge of his liability; and, the sum paid having been actually applied to the payment of debts, been called upon by the receiver to pay again.

We do not rely on the assurances given by Mr. Needham to the stockholders as binding upon the receiver as an engagement. But they establish and interpret the purpose of the payment. They show that a discharge of the statute liability was the intent of the transaction.

The authorities cited below seem to us conclusively to establish the proposition that a statute liability for the debts of a corporation is discharged *pro tanto* by an advancement to the corporation to pay debts, or by a payment of the debt of any single creditor, in cases where the liability is direct to individual creditors. We claim that the principle is applicable where the liability is to a receiver, who is to distribute the fund among all creditors *pro rata*, and a payment has been made to a general fund of which creditors have the benefit, and which cannot lawfully be paid out in any mode which operates as a preference.

It is clear that the giving of the bank to its officers by Needham, and the subsequent payment of debts, were illegal after the acts of bankruptcy already committed, and that the receiver can recover back all sums, if any, paid out by way of preference.

But it also appears that the effect of the brief resumption was largely to benefit creditors, on the whole. They are in the same condition as if the Court had authorized an assignee in bankruptcy to continue business for the benefit of creditors, and his conduct of the business had resulted in investing the assets and diminishing the liabilities.

Assuming, then, that it is established that these alleged shareholders have paid in voluntarily a sum they were not obliged to pay, with intent that it should be applied to increase a fund to discharge the indebtedness of the bank, and that it has been so applied, and the creditors collectively and individually are thereby in better condition than if the method provided by law had been strictly pursued, we submit that on well-established principles of equity such payment will be treated as a discharge of the statute obligation.

This may be treated either as
An equitable performance of the obligation,
An equitable satisfaction,
A substituted performance,
Or an equitable set-off.

It is not important to consider carefully the distinction between them. They all rest upon the general principle, that equity will not permit double benefits where but one benefit is intended, or impose double burdens where but one obligation is due. The money due from these debtors has reached these creditors, and the substance of their obligations has been fully performed.

Terry *v.* Little, 101 U. S. 216, 218.
2 Pomeroy, Eq. Jur. § 579.
Smith, Principles of Eq. p. 461.
1 Pomeroy, Eq. Jur. 859.
Tubbs *v.* Broadwood, 2 Russ. & M. 487.
Lechmere *v.* Carlisle, 3 P. Wms. 227.
Lowden *v.* Lowden, 1 Bro. Ch. 582.
Leach *v.* Leach, 10 Ves. 516.
Wilcox *v.* Wilcox, 2 Vernon, 558.
2 Lead. Cas. in Eq. 833, 4 Am. Ed.
Blandy *v.* Widmore, 1 P. Wms. 323.
Deacon *v.* Smith, 2 Atk. 323.
1 Pom. Eq. 88, 420, 421, 461, 520, 521.
2 Ib. 580.
1 Story, Eq. Jur. 1107.
2 Ib. 1099, 1104.
Smith, Eq. 444.
Ex parte Pye, 18 Ves. 140.
Hinchcliffe *v.* Hinchcliffe, 3 Ves. 516.
Thynne *v.* Glengale, 2 H. L. Cas. 131.
2 Redfield, Wills (2d Ed.), 515 *et seq.*, Sec. 10, Sec. XI., p. 525, cases cited in note.
Raleigh *v.* Raleigh, 35 Ill. 512.
Briggs *v.* Penniman, 8 Conn. 390.
Tallmadge *v.* Fishkill Iron Co., 4 Barb. 382.

Jones *v.* Wiltberger, 42 Ga. 578.
Thompson's Liability of Stockholders, 392.
Lee *v.* Lee, 31 Georgia, 26.
1 Story's Eq. 840.
2 Pomeroy, 952.
United States *v.* Knox, 102 U. S. 422, 425.
Hindustan *v.* Alison, L. R. 6, C. P. 54.
Marine Bank *v.* Fulton Bank, 2 Wall. 256.
Scammon *v.* Kimball, 92 U. S. 370.
National Bank *v.* Ins. Co., 104 U. S. 54.
Patterson *v.* Lynde, 106 U. S. 519.
Smith *v.* Hurd, 12 Metc. 371.

No offer to return the certificates or notice to rescind the transaction was necessary. The transaction never took effect. Nothing ever passed to these alleged stockholders as against the corporation. There was nothing to be avoided or rescinded, and the certificates were of no value so as to need to be returned.

Reed *v.* Boston Machine Co., 141 Mass. 454.
Am. Tube Works *v.* Boston Machine Co., 139 Mass. 11.

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118-65-5

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United States Supreme Court.

No. 792.

CHARLESTOWN SAVINGS BANK, Appellant,

v.

PETER BUTLER, Receiver.

No. 823.

Same, Plaintiff in Error, *v.* Same.

Brief of Appellee and Receiver.

This case is the same substantially in all of its general aspects as Delano's. (Law Rec., pp. 8, 12, 13–15, 60 to 62; Eq. Rec., pp. 81 to 89; 90 to 95.) There are slight differences only.

The appellant bought 60 shares of old stock on September 17, 1881, and got rights and took 140 shares of the new stock. (Eq., pp. 81–89, 90–95; Law case, pp. 59 to 61.) One of its Trustees attended the annual meeting of January 10, 1882, but did not take any active part or stay through. (Eq., 89 to 92.) We rely on the brief submitted in the Delano case.

A. A. RANNEY.